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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 464

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY, PETITIONER,

vs.

WALTER O. HILL, TREASURER AND EX-OFFICIO COLLECTOR OF HENRY COUNTY, MISSOURI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED OCTOBER 28, 1929

CERTIORARI GRANTED JANUARY 6, 1930

(34,595)

(34,595)

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[fol. a] [Caption omitted]

IN CIRCUIT COURT OF HENRY COUNTY

JANUARY TERM, 1929

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Plaintiff,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of the Revenue Within and for Henry County, Missouri, Defendant

MINUTE ENTRIES OF TRIAL—Jan. 23, 1929

Now at this day this cause coming on for hearing, come all the parties herein, in person and by attorneys and announce ready for trial.

Comes plaintiff, by leave of court and files its amended petition.

Comes defendant, by attorneys, and files answer to plaintiff's amended petition, in form of a general denial. Trial before the court. Trial commenced and progressed and not being terminated at the hour of adjournment, the further hearing of this cause is laid over until tomorrow morning [fol. b] at 9 o'clock. January 24, 1929.

[Title omitted]

Now at this day come again all the parties, herein in person and by attorneys, and the trial of this cause progressed and is terminated and the court after hearing the evidence and argument of counsel for both sides, takes said cause under advisement.

IN CIRCUIT COURT OF HENRY COUNTY

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Plaintiff,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of the Revenue Within and for Henry County, Missouri, Defendant

JUDGMENT AND ORDER ALLOWING APPEAL—Mar. 4, 1929

Now on this 4th day of March, 1929, this cause coming on for final decision and judgment, the same having been

taken under advisemcnt by the court on January 24th, 1929 and the court now being fully advised in the premises finds the issues for the defendant.

It is therefore ordered, considered and adjudged by the court, that the prayer of the plaintiff for an injunction be, and the same is hereby denied, and the petition therefore dismissed.

It is further ordered and adjudged that the defendant have and recover of the plaintiff his costs herein laid out and expended, and have execution therefor.

Comes now plaintiff by attorneys, and files herein its motion for a new trial, which said motion is by the court overruled; comes again plaintiff, by attorney and files affidavit and application for an appeal to the Supreme Court of Missouri, which said application is sustained and appeal granted to the Supreme Court of Missouri.

[fol. c] Bond in appeal fixed by the court, in the sum of Fifteen Hundred ($1,500.00) dollars; comes plaintiff and presents to the court its bond in said sum of Fifteen Hundred ($1,500.00) dollars said bond is by the court approved and ordered filed. Comes plaintiff and deposits a docket fee of Ten ($10.00) dollars with the clerk of this court. Leave to file Bill of Exceptions granted plaintiff within the time required by law.

Clerk's certificate to foregoing omitted in printing.

[fol. 1] In Supreme Court of Missouri, April Term, 1929

No. 29549

Brinkerhoff-Faris Trust & Savings Company, Appellant,

vs.

Walter O. Hill, Treasurer and ex-Officio Collector of the Revenue in and for Henry County, Missouri, Respondent

Appellant's Abstract of the Record—Filed May 6, 1929

This action was begun in the Henry County Circuit Court on April 26, 1928, by plaintiff filing its petition. Summons was duly issued for the defendant and served upon him.

Later, on January 14, 1929, plaintiff filed its amended petition which was identical with the first petition excepting that Dwight M. Lane, the newly elected treasurer and ex-officio collector of Henry County, Missouri, was made [fol. 2] the defendant in place of Walter O. Hill.

Thereafter, on January 23, 1929, leave of court having been duly obtained therefor, plaintiff filed its second amended petition which was in words and figures as follows, those parts which are in parentheses are amendments made by leave of court, after the evidence was all in.

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Plaintiff,

vs.

WALTER O. HILL, Treasurer and ex-officio Collector of Revenue of Henry County, Missouri, Defendant

AMENDED PETITION—Filed Jany. 23, 1929

Comes now the plaintiff and files its amended petition in this cause, leave of court having first been obtained therefor, and, for its cause of action against the defendant states:

I

That the plaintiff, the Brinkerhoff-Faris Trust & Savings Company, is and was at the time hereinafter mentioned, a corporation organized and existing as a trust company and banking corporation under and by virtue of the laws of the State of Missouri and engaged in the business of a trust [fol. 3] company and bank at Clinton in Clinton Township, Henry County, Missouri; that its shares of stock are owned by a great number of individuals; that under the laws of Missouri the said shares of stock are assessed for taxation against and to the individual owners thereof; that the president or other chief officer of the plaintiff is required by law annually to make return on said shares to the assessor of said Clinton township for purposes of taxation and that the plaintiff was required by law to pay for the benefit of its shareholders the lawful taxes assessed and levied against its said shares and is empowered to recover the

amount of the said taxes so paid from its several shareholders that the plaintiff brings this suit as trustee on behalf of each and all said shareholders and to avoid a multiplicity of actions.

II

That the defendant, Walter O. Hill, is the Treasurer of Henry County, Missouri, and ex-officio collector of the revenue within and for said Henry County, Missouri, and that at all times herein mentioned the said Henry County, Missouri, has been under township organization and all the laws effecting and governing township organization have been and are in force in Henry County, Missouri, as set forth in Chapter 121 of the Revised Statutes of Missouri for the year 1919 and the amendment thereof; and that the said Walter O. Hill as the duly elected, qualified and acting [fol. 4] treasurer and ex-officio collector of the revenue in and for said Henry County, Missouri, is charged with the duty and vested with the power to collect all state, county and school taxes upon personal property assessable and taxable in Clinton Township in said Henry County, Missouri, and to prosecute such suits for the collection thereof as might be instituted and maintained for such purpose by a county collector under the general laws of the State of Missouri, and has brought an action against this plaintiff to collect the taxes hereinafter mentioned.

III

That on the 31st day of July, 1926, the vice president and chief officer of the plaintiff corporation did, under oath, deliver to the assessor of Clinton Township in Henry County, Missouri, a list of all shares of stock held in the plaintiff corporation by its stockholders on June 1, 1926, the face value thereof, the value of all real estate represented by such shares of stock together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation so listed and valued at their true value in money as of June 1, 1926, less the value of the real estate represented by the shares of stock of said corporation as required by Section 12,775 R. S. Mo. 1919, and that the property so listed and returned

[fol. 5] by the plaintiff was of the true net value in money of $144,660.00 on June 1, 1926 and was so listed and valued by its said vice president and chief officer.

IV

That upon receipt by the township assessor of the list furnished him as aforesaid by the plaintiff, the said township assessor valued and assessed the property and assessed the shares of stock representing the said property on a basis of one hundred per centum of the value as listed and returned by the plaintiff and that the said assessment of said shares of stock was fixed at one hundred per centum of the true value in money of the said property of the plaintiff as represented by the shares of stock thereof on June 1, 1926, that thereafter, the said township assessor entered the said assessment upon his assessor's books as required by law and delivered the same to the county court of Henry County, Missouri, as required by law and that the said county clerk forwarded abstract of the same and of the return made by the plaintiff, to the state auditor to be laid before the State Board of Equalization, as required by law.

V

That the said township assessor assessed the great mass of all other real and personal property within said Clinton Township in Henry County, Missouri, (excepting bank [fol. 6] stock) at 75 per centum of its true value in money, which said property, under the laws of the State of Missouri, is subject to an ad valorem tax and is thereby in the same class for purposes of taxation with the shares of stock in the plaintiff corporation.

VI

That it is the duty of the county clerk to include in his abstract of the assessor's books required by law to be sent to the state auditor, the valuation of all properties assessed under Section 12,775 R. S. Mo. 1919, and in addition thereto to make out from the lists delivered to the township assessor, described in paragraph III hereof, an abstract of the returns of all persons or corporations doing a banking

business in Henry County, Missouri, showing all the information which is required by law to be furnished by the president or other chief officer under Section 12,775 aforesaid and it is the duty of the state auditor, under the law, to lay all of such abstracts before the State Board of Equalization in order that the said State Board of Equalization may equalize the valuation of each class of property among the respective counties of the state as required by law and in order that said board may also take the final step in making the assessment of such property; that the said county clerk of Henry County, Missouri, did send the abstracts aforesaid to the state auditor and the state audi-
[fol. 7] tor and the state auditor did, as required by law, lay the said abstracts before the State Board of Equalization and the said State Board of Equalization did, in due course, to-wit, on April 1, 1928, make and certify to the county clerk the assessments of all the property, real and personal, in Henry County, Missouri, and that thereby the shares of stock in the plaintiff corporation were assessed for taxation at 100 per centum of its true value and the great mass of all other real and personal property subject to an ad valorem tax in Clinton Township in Henry County, Missouri, and belonging to the same class for purposes of taxation as stock in the plaintiff corporation, was undervalued and was assessed at not to exceed 75% of its true value in money (and the assessor intentionally, systematically, deliberately and arbitrarily failed and omitted to assess certain species of personal property in Clinton Township, to-wit, poultry of every sort and suckling animals of every kind) and that said assessment (and the failure to assess said species of property, to-wit, poultry and suckling animals of all kinds) was the result of a deliberate, systematic, intentional and arbitrary plan of the assessor of said Clinton Township to discriminate against the shares of stock of this plaintiff and of other banks and trust companies in said Clinton Township.

That the act of the said assessor and of the State Board of Equalization in so assessing shares of stock in the plain-
[fol. 8] tiff corporation and allowing the valuation and assessment of the great mass of other property subject to an ad valorem tax and in the same class for purposes of taxation as said shares of stock to remain at 75% of its

true value in money (and said failure to assess said species of property-to-wit, poultry and suckling animals of all kinds) while assessing the shares of stock in the plaintiff corporation at 100 per centum of its true value in money was a deliberate, systematic, intentional and arbitrary discrimination against the shares of stock of the plaintiff corporation and the owners thereof and the plaintiff herein.

VII

That on June 1, 1926, there were 17 banks in Henry County, Missouri, and that all of the said banks, including the plaintiff, duly made their several lists and returns to their respective assessors as required by law, which said lists and returns showed their bank stock valued at 100 cents on the dollar of their actual valuation as of June 1, 1926, that the several township assessors valued and assessed the shares of stock of each of said banks at 100 per centum of its true value as returned by the banks and entered the said assessment upon their several assessor books as required by law and delivered the same to the county court of Henry County, Missouri, as required by law, and [fol. 9] the said county clerk made and forwarded an abstract of the same and of the returns made by the said banks to the State Auditor to be laid before the State Board of Equalization as required by law and that the said State Board of Equalization, on the first day of April, 1927, and before the meeting of the Henry County Board of Equalization equalized the valuation of the several classes of real and personal property as returned by the assessor in Henry County, Missouri, and equalized and adjusted the valuation of bank stock in Henry County, Missouri, by fixing the total number of the assessed valuation of bank stock in Henry County, Missouri, at the same figure as the total of all the returns made to the assessor by the said 17 banks and as the total assessments of all bank stock as shown by the abstract of said returns of said assessment as made by the county clerk of Henry County, Missouri, to the State Auditor as aforesaid and that the said State Board of Equalization adopted in full the valuations made by the said township assessor of the stocks in the several banks in Henry County, Missouri, and that the secretary

of the State Board of Equalization, on the first day of April, 1927, certified the same to the county clerk of said Henry County, Missouri, all of which was done prior to the date of the meeting of the Henry County Board of Equalization.

[fol. 10]

VIII

That thereafter, under and by virtue of the laws of the State of Missouri, there were, by the duly elected, qualified, authorized and acting officers and agents of the said Clinton township and the said Henry County and the said State of Missouri, regularly levied, by duly established rates per centum on the assessed and equalized valuations, and duly extended and certified by the said officers, in the manner provided by law, upon and against this plaintiff and upon and against its personal property aforesaid and against its several shareholders, certain state, county, township, school and road taxes aggregating the sum of $2648.24 for the year 1927 and that the taxes so levied and charged were upon the said property as assessed at 100 per centum of its true value in money.

IX

The plaintiff admits that such part of said taxes as is based upon the valuation and assessment of 75 per cent of the true value in money as aforesaid of the shares of stock which have been levied and assessed against it and its stockholders as aforesaid is a lawful and valid tax and amounts to $1986.18; but plaintiff states that the amount in excess thereof is illegal and void.

The plaintiff further states that on the 30th of December, 1927, it tendered to W. F. Carter, township collector for [fol. 11] Clinton township, Henry County, Missouri, an officer duly authorized to receive and receipt for said taxes, the same sum of $1986.18, which said tender the said collector then and there refused; that this plaintiff admits the said sum of $1986.18 is a just and lawful tax and it does hereby tender and continue to tender to the defendant herein the said sum in payment of the taxes which have been lawfully assessed and levied against the shares of stock of the plaintiff.

X

That Section 3 of Article X of the Constitution of the State of Missouri is as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general law."

That Section 4 of Article X of the Constitution of Missouri is as follows:

"All property subject to taxation shall be taxed in proportion to its true value."

That Section 1 of Amendment XIV of the Constitution of the United States provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

[fol. 12] XI

That the taxing authorities aforesaid deliberately, intentionally, systematically and arbitrarily valued and assessed the plaintiff's property as represented by its shares of stock at one hundred per centum (100%) of its true value in money and deliberately, intentionally, systematically and arbitrarily undervalued and assessed all other property which is subject to an ad valorem tax in Clinton Township, Henry County, and in the same class for the purpose of taxation, at only seventy-five per centum (75%) of its true value in money (and the said taxing authorities intentionally, systematically, deliberately and arbitrarily failed and omitted to assess poultry of every sort and sucking animals of all sorts in said Clinton township) and that such action by the taxing authorities was a discrimination against and a fraud upon the shareholders of the plain-

tiff bank and places an unjust and unequal burden of taxation upon the said shareholders and that that part of the taxes sought to be collected by the defendants from the plaintiff herein, which is based on valuation and assessment in excess of seventy-five per centum (75%) of the true value in money of the shares of stock in the plaintiff bank and which amounts to $662.06, is illegal and void because the said deliberate, intentional, systematic, and arbitrary undervaluation of all other property and its assessment at seventy-five per centum (75%) of its true value in money [fol. 13] and the said deliberate, intentional, systematic and arbitrary valuation of the property of the plaintiff, as represented by its shares of stock at one hundred per centum (100%) of its true value in money violates Section 3 of Article X of the Constitution of Missouri requiring uniformity of taxation upon the same class of subjects within the territorial limits of the authority levying the tax and violates Section 4 of Article X of the Constitution of Missouri requiring that all property shall be taxed in proportion to its value and violates Section 1 of Article XIV of the Constitution of the United States in that it deprives the plaintiff's shareholders of the equal protection of the laws and deprives them of their property without due process of law.

XII

That the plaintiff has no complete and adequate remedy at law and has not had any such complete and adequate legal remedy at any stage of the matters aforesaid; that its right of appeal from the assessor to the county board of equalization could not have afforded the plaintiff any adequate remedy whatsoever, for the reason that the said County Board of Equalization was wholly without any power to fix finally the amount of said assessment, the amount of said assessment having been finally fixed and adjudged by the State Board of Equalization under the laws in force at the times aforesaid by their action of April [fol. 14] 1, 1928, as aforesaid, that there is no appeal permitted by law from the County Board of Equalization to the State Board of Equalization and no appeal permitted by law from the assessment judgment as finally entered by

the State Board of Equalization to any other court or tribunal; that the plaintiff's right to a writ of certiorari against the County Board of Equalization and against the State Board of Equalization whereby it might have the bare record of the said County or State Board of Equalization sent to a court for review, does not afford this plaintiff any remedy whatsoever because the discrimination of which it now complains does not appear and could not be made to appear upon the record of the said State Board of Equalization or said County Board of Equalization.

XIII

That on the 5th day of April, 1928, the defendants herein instituted a suit in the Circuit Court of Henry County, Missouri, against this defendant for the recovery of $2648.24, the taxes so assessed and levied as aforesaid against the shares of stock of the plaintiff for the year 1927, which said suit is returnable to the May term, 1928, of said Circuit Court; that the plaintiff's right to have 25% of the said taxes declared as null and voil on the ground of the deliberate, systematic, intentional and arbitrary discrimination aforesaid is not available to this plaintiff as a partial de-[fol. 15] fense to said action or by cross bill therein, and that plaintiff can only avail itself of its said right in an independent action brought for the purpose of attacking the said assessment; that unless the plaintiff is granted the relief sought in this petition it will be compelled to pay the said illegal tax; that the said taxes will become a lien upon its shares of stock and that said shares of stock cannot be transferred until the said lien is discharged and that said shares of stock will be sold and its shareholders will suffer irreparable injury in this, that after the said taxes shall have been paid by the plaintiff, the shareholders are wholly without any remedy at law or in equity; that its shares of stock are owned by a great number of stockholders and that this suit will prevent a multiplicity of actions by its several shareholders against the defendant involving the same question.

XIV

Wherefore the plaintiff prays that the court will restrain and enjo-n the defendant from prosecuting its said action

at law for the recovery of said taxes in the Circuit Court of Henry County, Missouri, until the court shall finally determine this present action and for that purpose will issue its temporary restraining order, and, if this present action shall end in a judgment for the plaintiff, than that the court will forever restrain and enjoin the defendant from [fol. 16] collecting or attempting to collect any part of the taxes assessed and levied against the shares of stock aforesaid which is based upon a violation and assessment in excess of seventy-five per centum (75%) of their true value in money and amounts to $662.06 as aforesaid and for such other and proper relief as the plaintiff, in equity and good conscience, may be entitled.

Montgomery & Rucker, Attorneys for Plaintiff.

Thereafter, on the 23rd day of January, 1929, the defendant filed his answer to the said second amended petition, which answer, omitting the caption, is in words and figures as follows:

ANSWER TO SECOND AMENDED PETITION—Filed January 23, '29

Comes now defendant and for answer to the petition of plaintiff, states:

I

He admits the allegations in paragraph one, except the allegation that plaintiff brings this suit to avoid a multiplicity of actions, which allegation, defendant denies.

2

He admits the allegations in paragraph two of the petition.

[fol. 17]

3

He admits the allegations in paragraph three of the petition, except the allegations that "a list of all shares of stock held in plaintiff corporation by its stockholders on

June 1, 1926, the face value thereof, the value of all real estate represented by such shares of stock together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation so listed and valued at their true value in money as of June 1, 1926, less the value of the real estate represented by the shares of stock of said corporation as required by Section 12,775 R. S. 1919, and that the property so listed and returned by the plaintiff was of the true net value in money of $144,660.00 on June 1, 1926, and was so listed and valued by its vice president and chief officer," which said allegations he denies.

4

He admits the allegations in paragraph four of the petition, except the allegation that the assessment of said shares of stock was fixed at one hundred per centum of the true value in money of the property of the plaintiff as represented by the shares of stock thereof on June 1, 1926, which allegation he denies.

5

He denies the allegations in paragraph five of the petition.

[fol. 18]

6

He admits the allegations in paragraph six of the petition, except the allegations "that the shares of stock in the plaintiff corporation were assessed for taxation at 100 per centum of its true value and the great mass of all other real and personal property subject to an ad valorem tax in Clinton Township in Henry County, Missouri, and belonging to the same class for purposes of taxation as stock in the plaintiff corporation, was undervalued and was assessed at not to exceed 75 per cent of its value in money and that said assessment was the result of a deliberate, systematic, intentional and arbitrary plan of the assessors of said Clinton Township to discriminate against the shares of stock of this plaintiff and of other banks and trust companies in said Clinton Township. That the act of the said assessor and of the State Board of Equalization in so

assessing shares of stock in the plaintiff corporation and allowing the valuation and assessment of the great mass of other property subject to an ad valorem tax and in the same class for purposes of taxation of said shares of stock to remain at 75 per centum or less of its true value in money, while assessing the shares of stock in the plaintiff corporation at 100 per centum of its true value in money, was a deliberate, systematic, intentional and arbitrary discrimination against the shares of stock of the plaintiff corporation and the owners thereof and the plaintiff herein," which allegations he denies.

[fol. 19] 7

He denies the allegations in paragraph seven of the petition.

8

He admits the allegations in paragraph eight of the petition, except the allegation that "the taxes so levied and charged were upon the said property as assessed at 100 per centum of its true value in money," which allegation he denies.

9

He denies the allegations in paragraph nine of the petition.

10

He admits the allegations in paragraph ten of the petition.

11

He denies the allegations in paragraph eleven of the petition.

12

He denies the allegations in paragraph twelve of the petition.

13

He admits the allegations in paragraph thirteen of the petition that on the 5th day of April, 1928, defendant instituted a suit in the Circuit Court of Henry County, Missouri, against plaintiff for the recovery of the taxes and [fol. 20] penalties, and denies all the other allegations in said paragraph contained.

14

Defendant denies that plaintiff is the proper party to institute and maintain this action.

15

Defendant denies that this court has jurisdiction of the persons or subject matter herein.

16

Further answering defendant avers that plaintiff is guilty of laches, in this, by not availing itself of the right given it by law, under and by virtue of Chapter 119, Articles 3 and 5 of the R. S. of Missouri, for year 1919 and amendments thereto.

17

Defendant avers that plaintiff is estopped from instituting and maintaining this action by reason of the fact that it failed to appear before the County Board of Equalization of Henry County, Missouri, or the State Board of Equalization of the State of Missouri, and pursue the remedy given it by law.

18

Defendant avers that plaintiff is estopped from instituting and maintaining this action because the action of the [fol. 21] State Board of Equalization in fixing and finding the values herein complained of, is a final judgment.

Defendant denies that plaintiff is entitled to the relief prayed for in its petition.

Wherefore defendant prays the court to deny and dismiss the petition of plaintiff and that he may go hence without day, with judgment for his costs.

F. F. Wesner, N. B. Conrad, C. A. Calvird, Jr.

Thereafter, on the 23rd day of January, 1929, the plaintiff filed its reply which, omitting the caption, is in words and figures as follows:

REPLY

Comes now the plaintiff and for its reply to defendant's answer herein denies each and every allegation thereof and will use its prayer for judgment.

Montgomery & Rucker, Attorneys for Plaintiff.

MINUTES OF TRIAL

On the same day at the January term, 1929, of said court, the cause was taken up for trial before the judge. The trial continued through January 23 and January 24. [fol. 22] At the conclusion of the evidence and arguments of counsel the court took the cause under advisement and an order was duly made and entered of record to that effect.

Later, on March 4, 1929, being the 5th day of the January term, 1929, the court rendered judgment in the cause for the defendant and the judgment was duly entered of record. It is as follows, omitting the caption:

JUDGMENT

Now on this 4th day of March, 1929, this cause coming on for final decision and judgment, the same having been taken under advisement by the court on January 24th, 1929, and the court now being fully advised in the premises finds the issue for the defendant

It is therefore ordered, considered and adjudged by the court, that the prayer of the plaintiff for an injunction be, and the same is hereby denied, and the petition therefore dismissed.

It is further ordered and adjudged that the defendant have and recover of the plaintiff his costs herein laid out and expended, and have execution therefor.

Thereafter, on the same day and during the said January term of said court, the plaintiff filed its motion for a new trial, which, omitting the caption, is in words and figures as follows:

[fol. 23] MOTION FOR NEW TRIAL

Comes now the plaintiff in the above entitled cause and moves the court to set aside the decree in this cause and grant plaintiff a new trial and as reason therefor plaintiff says:

I

The decree is against the law.

II

The decree is against the evidence.

III

The decree is against the weight of the evidence.

IV

The court erred in holding that plaintiff was not entitled to recover and in finding the issues for the defendant for the reason that under the evidence offered by the respective parties it appears that the taxing authorities in Clinton Township and in Henry County, Missouri, deliberately, intentionally, systematically and arbitrarily undervalued practically all property subject to an ad valorem tax in

Clinton Township and Henry County except the class of property owned by plaintiff which was assessed at 100 per cent of its value, and that in so doing plaintiff was deprived of its rights, guaranteed by Section 3 of Article X of the Constitution of Missouri requiring uniformity of taxation upon the same class of subjects within the territorial limits [fol. 24] of the authority levying the tax.

V

Because the court, in finding for defendant and against plaintiff, deprived the plaintiff and the plaintiff's shareholders of their constitutional rights guaranteed by Section 4 of Article X of the Constitution of Missouri, which requires all property to be taxed in proportion to its true value, in that the shares of stock owned by plaintiff's shareholders were assessed at 100 per cent of their value and the property of practically all other taxpayers was deliberately, intentionally, systematically and arbitrarily assessed at less than 75 per cent of its true value.

VI

Because in finding for defendant and against plaintiff the court deprived plaintiff of its constitutional rights guaranteed by Section 1 of Amendment XIV of the Constitution of the United States in that the finding of the court deprived plaintiff's shareholders of the equal protection of the laws and deprived them of their property without due process of law, for the reason that the shares of stock owned by plaintiff's shareholders were assessed at 100 per cent of their value and the property of other taxpayers was deliberately, intentionally, systematically and arbitrarily assessed at less than 75 per cent of its true value.

[fol. 25]

VII

The court erred in finding for defendant and against plaintiff because it affirmatively appears that the taxing authorities of Clinton Township, Henry County and the State of Missouri, deliberately, intentionally, systematically, and arbitrarily failed and refused to include in the assessment list every species of property not exempted

by law from taxation as required by Section 12,766 R. S. Mo. 1919, in assessing practically all other property in Clinton Township, Henry County, Missouri, except the class to which the stock owned by plaintiff's shareholders belonged.

VIII

The court erred in finding for defendant and against plaintiff because it was made the duty of the taxing authorities in Clinton Township in Henry County and in the State of Missouri, by Section 12,967 R. S. Mo. 1919, in assessing personal property to include every tangible thing being subject to ownership, whether animate or inanimate, and under the record in this case it affirmatively appears that the said taxing authorities deliberately, intentionally, systematically and arbitrarily failed and refused to include suckling animals of any kind or character, or poultry of any kind or character in the tax lists of all persons in Clinton Township and in Henry County, Missouri, who owned on the first day of June, 1926, either suckling animals or poultry [fol. 26] or both suckling animals and poultry, and it therefore appears that by such deliberate, intentional, systematic and arbitrary conduct on the part of the taxing authorities personal property of great value belonging to taxpayers other than plaintiff's shareholders was not listed for taxation at all, thereby resulting in a deliberate, intentional, systematic and arbitrary discrimination against plaintiff's shareholders and a deliberate, intentional, systematic and arbitrary undervaluation of the personal property of taxpayers other than plaintiff's shareholders.

IX

The court erred in finding for the defendant and against the plaintiff for the reason that it affirmatively appears from the record that the taxing authorities of Clinton Township, of Henry County and of the State of Missouri, deliberately, intentionally, systematically and arbitrarily assessed sheep in Clinton Township and in Henry County at a flat rate of $5.00 per head for aged sheep and deliberately, intentionally, systematically and arbitrarily eliminated entirely from the assessment suckling lambs of

great value, when it affirmatively appears that an assessment of $5.00 per head on aged sheep as of the first of June, 1926, only reflected 60 per cent of the actual value of such aged sheep and it further appears that the value of the lambs which were eliminated from the assessment were [fol. 27] of greater value than the aged sheep included in the assessment and that thereby and as a result of such deliberate, intentional, systematic and arbitrary undervaluation of the aged sheep and elimination of the suckling lambs and the deliberate, intentional, systematic and arbitrary assessment of the shares of stock of plaintiff's shareholders at 100 per cent of the statutory value of said shares resulted in and amounted to a violation of the rights of plaintiff's shareholders as guaranteed by Section 3 of Article X and Section 4 of Article X of the Constitution of Missouri and of Section 1 of Amendment XIV to the Constitution of the United States of America.

X

Because the court erred in finding for the defendant and against the plaintiff for the reason that it appears from the record in this cause that cattle three years old and over were by the deliberate, intentional, systematic and arbitrary conduct of the taxing authorities in Clinton Township in Henry County and in the State of Missouri assessed at a flat rate of $30.00 per head and all suckling calves were deliberately, intentionally, systematically and arbitrarily eliminated from assesment, when, as a matter of fact, the cattle were worth on the first day of June, 1926, more than $60.00 per head and the suckling calves were of great value and that as a result of said deliberate, intentional, systematic and arbitrary undervaluation of said [fol. 28] cattle of three years old and over and the elimination of said suckling calves from said assessment list and the deliberate, intentional, systematic and arbitrary valuation of the shares of stock owned by plaintiff's shareholders at 100 per cent of the value of said shares, the plaintiff's shareholders have been deprived of their rights guaranteed by Section 3 of Article X and Section 4 of Article X of the Constitution of Missouri and Section 1 of Amendment XIV to the Constitution of the United States.

Montgomery & Rucker, Attorneys for Plaintiff.

Thereafter, on the same day and during the said January term of said court, the court by order duly made and entered of record, overruled the said motion for new trial, to which exception was duly saved.

Order Allowing Appeal

Thereafter, and on the same day and during said January term of said court the plaintiff filed its application and affidavit for appeal to the Supreme Court of the State of Missouri, which said application was sustained and an appeal was granted to the Supreme Court of Missouri by an order duly entered of record.

On the same day the appeal bond was fixed by the court in the sum of $1500.00 and the plaintiff presented its appeal bond in said sum and the said bond was by the court ap- [fol. 29] proved and ordered filed. The plaintiff thereupon deposited with the clerk of the court a docket fee of $10.00.

Transcript Filed in the Supreme Court

And thereafter, and within the time fixed by law, appellant's attorneys filed with the clerk of the supreme court a certified copy of the judgment and order granting the appeal.

On the same day and during the said January term of the court, the court, by an order duly entered of record, granted to the plaintiff (appellant) leave to file its bill of exceptions within the time required by law.

Order Settling Bill of Exceptions

On the 5th day of April, 1929, and within the time allowed by law, the plaintiff presented its bill of exceptions which was duly allowed and signed by the Hon. W. L. P. Burney, judge of said court, and ordered filed and made a part of the record, which was accordingly done on said date. Said bill of exceptions is as follows:

[fol. 30] **Bill of Exceptions**—Filed April 5, 1929

[Title omitted]

Appearances: For plaintiff, Montgomery, Rucker and Hays. For defendant, Frederick F. Wesner, C. A. Calvird, Jr., and N. B. Conrad.

CAPTION

Be it remembered that on Wednesday, January 23rd, 1929, the same being the — day of the regular January Term of said court, the above entitled cause coming on to be heard, the following proceedings were had and made of record therein:

Said cause is tried before the court, it being an equity case. The plaintiff, to sustain the issues upon its part, introduced the following testimony:

COLLOQUY BETWEEN COURT AND COUNSEL

By Mr. Wesner: We can shorten this to a certain extent, with the consent of the gentlemen on the other side, and to relieve the court and ourselves of some embarrassment, because we are going to be continually objecting to the greater mass and part of the testimony that the other gentlemen will probably offer, and if we could interpose one general objection to the entire testimony of all the witnesses to be placed upon the stand, with the understanding that it is to go for all the witnesses' testimony touch-[fol. 31] ing that particular phase of the case and questions in issue, it would save us from objecting every time to every witness testifying who is placed on the stand.

By Mr. Rucker: That is an excellent idea.

By Mr. Wesner: I will make those objections for the purpose of the record, with the understanding that they stand good so far as they touch the evidence of any witness who is placed on the stand to testify in this case in behalf of the plaintiff, and they are as follows:

First. We object to the introduction of any testimony in this case by plaintiff for the reason that the court does

not have proper jurisdiction of the subject matter in this cause attempted to be raised; nor of the persons herein.

Second. Because the plaintiff is now estopped under the laws of this state from disputing and maintaining this action, by reason of the fact that it did not avail itself of the remedies and its rights in law and this action is a collateral attack upon the judgments and findings of the County Board of Equalization and the State Board of Equalization.

Third. By reason of the fact that all of the testimony of such witness or witnesses introduced for the purpose of proving values, or to controverting or questioning the value, judgment and finding of the County Board of Equalization, and the State Board of Equalization, and the as-
[fol. 32] sessor of Clinton Township, Henry County, Missouri, and any other officer or officers of Clinton Township, of Henry County, Missouri, or of the State of Missouri, is immaterial and irrelevant, and does not prove or tend to prove any issue in this case and is merely an attempt to dispute and overturn such value or values fixed by the officers charged under the laws of this state so to do, is purely the opinion and conclusion of such witness and witnesses and cannot have any force here.

Fourth. That the finding of the State Board of Equalization and the assessing officers of Clinton Township, Henry County, Missouri, and the State of Missouri is a final judgment and that the trial of this case and issues herein and the hearing of any testimony herein is res adjudicata.

By the Court: The objection to the introduction of testimony and other reasons assigned by counsel, is overruled for the present.

By Mr. Wesner: If Your Honor please I would like to ask if all exceptions are saved or must we save them specially?

By the Court: It will be understood that all exceptions are saved on the part of the plaintiff and defendant and it will not be necessary for you to specially except after the sustaining or overruling of each objection—whether shown or not all exceptions to rulings of the court on objections herein will be treated as saved.

[fol. 33] By Mr. Wesner: If the court please, we are discussing whether we want to interpose another general objection. Might not I consult with Mr. Calvird, as to that?

By the Court: Certainly.

(Counsel consult.)

By Mr. Wesner: We will reserve the right to make further objections to all testimony introduced.

Mr. Ray Dooley, of lawful age, being produced, sworn and examined by Mr. Lee Montgomery, testified on behalf of the plaintiff as follows:

Q. Mr. Dooley, you are the County Clerk of Henry County, Missouri?

A. Yes, sir.

Q. How long have you been in office?

A. I went in January, 1927.

Q. Have you in your possession an abstract of the assessment of bank stock of Henry County, prepared by the county clerk, for the purpose of being forwarded and transmitted to the state auditor as the state records?

A. Yes, sir.

(Witness produces abstract of assessment.)

Q. This is the year 1926?

List marked Exhibit A.

By Mr. Montomery: That isn't the paper I thought it was; but we will have it marked.

Q. The paper, Mr. Dooley, which we have had the stenographer mark Plaintiff's Exhibit A, is an abstract of the assessment of banks, made by you as county clerk, on the 15th of February, 1927, and not an abstract of the assess-
[fol. 34] ment of all property in Henry County, is that right?

A. Yes, sir.

Q. Now have you a copy of the abstract of assessment of all property in Henry County made in February—no, made in January, 1927?

A. Yes, sir, I think so (produces paper).

Said abstract of assessment is marked Exhibit B.

This paper, known as the aggregate abstract of the taxable property and its valuation, in Henry County, on the 1st day of June, 1925; signed the 8th of January, 1926, by the county clerk.

Q. Have you been able to find, Mr. Dooley, the certificate which was forwarded to the county clerk—by the State Board of Equalization, sometime in the spring of 1927?

A. I think I have that.

Produced and marked Exhibit C.

Q. Have you with you the tax books of the county, showing the assessment of the bank stocks to all the banks and trust companies in Henry County, as of June first, 1926?

A. Yes, sir; they are over on that table (indicating).

By Mr. Montgomery: Will you gentlemen consent that we may treat these books as identified, in order that from time to time we may introduce such part in evidence as we need? We want to prove now what the taxation of each bank in Henry County was, as of June 1st, 1926?

By Mr. Wesner: All right: If the court please, we will admit that the books are identified; and we object to their [fol. 35] being offered in evidence, on the ground that they are immaterial and irrelevant, and don't tend to prove or disprove any issue in this case. Do I understand that you are offering them at this time?

By Mr. Montgomery: We aren't offering them, until we locate the thing we want to offer.

Q. I will ask if you will be kind enough to take those books and find the amount of the assessment of each bank in Henry County, as of June 1st, 1926?

A. Which one do you have reference to?

Q. Well, the First National Bank of Windsor, the Farmers' Bank of Windsor and the Citizen's Bank of Windsor?

A. Now, the first—the First National Bank of Windsor.

Q. Well?

A. Total valuation of assessment was $64860.

By Mr. Wesner: Before the court considers that evidence, we want to object that it is immaterial and irrelevant, not tending to prove or disprove any issue in this case; and for the further reason, the First National Bank

of Windsor, Missouri, isn't a party to this suit, and not a party interested in the subject matter thereof.

By Mr. Rucker: We offer the assessed valuation of all the banks in the county, for the purpose of showing a scheme; and that is the only way we can show it.

By the Court: To show the uniformity or lack of uniformity in taxation?

[fol. 36] By Mr. Rucker: Yes.

By the Court: Objection overruled.

Q. $64860?

A. Yes, sir.

Q. The Citizens' Bank of Windsor?

By Mr. Wesner: Same objection.

By Mr. Montgomery: We will consider that you make the same objection to every offer.

By Mr. Wesner: All right.

By the Court: Same ruling. Overruled.

A. $48950.

Q. That was the Citizens' Bank?

A. Yes, sir: $48950.

Q. The Farmers Bank of Windsor?

A. $37270.

Q. The Peoples Bank of Calhoun?

A. That would be $36700.

Q. That was the Peoples Bank of Calhoun?

A. The Peoples Bank of Calhoun was $2850. The total value of the assessment isn't in here—isn't marked on this book.

By Mr. Montgomery: If Your Honor please, there is something wrong with this; we don't check at all. Let's see.

Q. The First National Bank of Windsor?

A. $64860.

Q. Let's take a fresh start in this matter—you got the wrong amount—what was the amount of the First National Bank of Windsor?

A. 64860.

Q. What was the Citizens Bank of Windsor?

A. 48950.

[fol. 37] Q. And the Farmers Bank of Windsor was?

A. $37270.

Q. The Peoples Bank of Calhoun was?
A. $36700.
Q. The Bank of Calhoun?
A. $19750.
Q. The Farmers Bank of Blairstown?
A. $9610.
Q. The Bank of Blairstown?
A. $20300.
Q. The Bank of Urich?
A. $33400.
Q. The Farmers & Traders Bank of Urich?
A. $15790.
Q. The Peoples National Bank of Clinton?
A. I don't have the Clinton book; take the rest of them, and I will go down and get it.
Q. All right. The Farmers & Merchants Bank of Montrose?
A. $12650.
Q. The Montrose Savings Bank?
A. $21700.
Q. The Bank of Deepwater?
A. $23740.
Q. The Farmers Bank of Deepwater?
A. $16130.
Q. The State Bank of Brownington?
A. $16160. That Clinton book, I think the collector has that.

(Sheriff sent to Capt. Carter's office for tax books.)

By Mr. Wesner: What tax books are those?
A. Clinton.
By Mr. Wesner: What year's tax books?
A. 1927.

By Mr. Montgomery: While we are waiting on that, we will introduce another paper——

[fol. 38] Q. Mr. Dooley, have you the certificate of the Secretary of the State Board of Equalization, sent to the county clerk in the spring of 1926?
A. No, sir; that's the one I couldn't find.

By Mr. Montgomery: If Your Honor please, we have assumed, until yesterday, that the county clerk would have

in his office a certain certificate which we need, and—well, we didn't assume, either, because we helped him—we learned he didn't have it—and I wrote the State Board of Equalization, and asked them to send us a copy, directed to the Brinkerhoff Company; we haven't got it yet; that paper has been misplaced so Mr. Dooley claims, the county clerk——

Q. But you have searched, Mr. Dooley, to find that document?

A. Yes, sir; looked all over the place.

Q. And haven't succeeded yet?

A. No.

By Mr. Montgomery: In any event, we will get it in here today.

Now, if Your Honor please, plaintiff now offers in evidence the document marked by the stenographer, Plaintiff's Exhibit A, being abstract of assessment of banks, as shown of June 1st, 1926, for the year 1927. Plaintiff also offers in evidence the document marked Plaintiff's Exhibit B, which is an aggregate abstract of taxable property and its valuation, on the County of Henry, on first of June, 1925. Plaintiff also offers in evidence document marked Plaintiff's Exhibit C, which is the certificate—certified copy of [fol. 39] the order of the State Board of Equalization, made on the 1st of April, 1927, and fixing the aggregate values of real and personal property in Henry County, Missouri, as of June 1st, 1926, in all of the 13 or 14 statutory classes which the State Board of Equalization is required to divide real and personal property into by the statute, and showing, among other things, that the valuation placed by the State Board of Equalization on banks and bank stock in Henry County, Missouri, was $681140.

By Mr. Wesner: Just a moment now; we now interpose the objection: Defendent objects to Plaintiff's Exhibit A, as being immaterial and irrelevant, and objects to Exhibit B, for the same reason, and for the additional reason that it is; that it purports to be an aggregate abstract for the year 1926, made up as of June 1st, 1925, a year before the facts, or the alleged facts in this case, became in issue.

By Mr. Rucker: I might say, we offer that for a purpose that will develop hereafter.

By Mr. Wesner: Defendant objects to Plaintiff's Exhibit C, for the reason that it is immaterial and irrelevant. Defendant objected a moment ago to the introduction of the tax bocks in evidence, and now renews the objection, for the reason—by reason of the fact that they are imma-
[fol. 40] terial and irrelevant, and don't tend to prove or disprove any of the issues in this case.

By the Court: Objection overruled for the present time.

Revenue—Form 34

Abstract of Assessment of Banks

(Required by Section 12775, R. S. Mo. 1919)

Assessment Made in Henry County, State of Missouri, on June 1, 1926, for Taxes of 1927

Name of banks	Number of shares	Total face value of the shares of each bank	Total reserve funds, undivided profits, premiums or earnings, and all other values	Total value of capital stock including reserve fund, undivided profits and other values	Total assessed value of the stock reserve funds, undivided profits, premiums, and all other values after deducting real estate	Total value of real estate represented by the stock which was deducted	Total assessed value of real estate represented by the stock shown by the real estate books, which was deducted
1	2	3	4	5	6	7	8
First National Bank of Windsor	500	$5000000	$2590004	$7590004	$6486000	$1100000	$1100000
Farmers Bank of Windsor	300	3000000	1528585	4528585	3727000	800000	800000
Citizens bank of Windsor	400	4000000	3680385	7680385	4895000	2785000	2785000
Peoples bank of Calhoun	225	2250000	1570275	3820275	3670000	150000	150000
Bank of Calhoun	150	1500000	750000	2250000	1975000	275000	275000
Farmers bank of Blairstown	100	1000000	730000	1730000	961000	768500	768500
Bank of Blairstown	100	1000000	1330000	2330000	2030000	300000	300000
Bank of Urich	200	2000000	1640525	3640525	3340000	300000	300000
Farmers bank of Urich	100	1000000	779446	1779446	1579000	200000	200000
Peoples National bank of Clinton	500	5000000	277273	5277273	5277000	None	None
Clinton National Bank of Clinton	500	5000000	6527737	11527737	7613000	3914000	3914000
Citizen bank of Clinton	250	2500000	3357443	5857443	2057000	3800000	3800000

Brinkenhoff-Falls T. & T. Co.....	1050	10500000	7366812	17866812	14466000	3400000	3400000
Farmers & Merchants bank, Montrose..	200	2000000	465337	2465337	1265000	1200000	1200000
Montrose saving bank.....	150	1500000	2000000	3500000	3170000	330000	330000
Bank of Deepwater.....	100	1000000	1564121	2564121	2374000	190000	190000
Farmers bank of Deepwater.....	100	1000000	958300	1958300	1613000	345000	345000
State bank of Brownington.....	100	1000000	736000	1736000	1616000	120000	120000
Totals	5025	$50250000	$37852243	$88102243	$68114000	$19977500	$19977500

I, —— ——, Clerk of the County Court of ——, County, State of Missouri, do hereby certify that the above is a true, complete and correct abstract of the assessments of all corporations or persons doing a banking business in said county, showing name of each bank, the number of shares of stock and the face value, amount of reserve funds, undivided profits, premiums or earnings, and all other values, together with the assessed value thereof; also, the value of real estate deducted, as shown by the assessment lists of banks filed in my office by the assessor for the year above mentioned, and also the assessed value of such real estate as has been deducted, as shown by the assessor's real estate book.

In testimony whereof, I have hereunto set my hand and affixed the seal of the County Court of Henry County. Done at office in Clinton this 15th day of February, 1927.

Ray E. Dooley, Clerk County Court. (Seal).

This abstract must be filed with The State Tax Commission by February 20th.

NOTE.—The total valuation, after deducting real estate, should correspond with the amount reported under bank stock in the aggregate abstract of the assessor's book.

[fol. 41] EXHIBIT "B"

An aggregate abstract of the taxable property and its valuation, in the County of Henry, State of Missouri, on the 1st day of June, 1925, as set out in the assessor's book for the year 1926

Real estate	Number of	Valuation	Average value
Acres on the book (include local assessment of land owned by public utilities & ins., Companies)	460550	17529090	38.06
Town lots on the book include local assessment of lots owned by public utilities & Ins., Companies	8853	5039940	569.29
Total valuation of real estate		22569030	

Personal Property (include under proper classification local assessment of presonal property owned by public utilities)

	Number of	Valuation	Average value
Horses	7846	248455	31.66
Mu'es	3620	170655	47.14
Asses and Jennets	36	2340	65.00
Neat cattle	27369	721018	26.34
Sheep	4649	21321	4.58
Hogs	19574	244468	12.48
All other live stock	221	850	3.84
Farm machinery		168404	
Household property		415412	
Money, notes, bonds and other evidence of debt.		1242665	
Bee colonies	447	462	1.03
Motor vehicles	3371	429389	127.37
Corporate companies, Bank Stock		685790	
All other personal property included in class 11 of assessment list		217585	
Total valuation of personal property		4568814	
Total real estate		$22569630	
Total personal property		4568814	
Total taxable property		$27138444	

I, J. M. Smith, Clerk of the County Court of Henry County, State of Missouri, do hereby certify that the foregoing is a true, complete and correct abstract of the taxable property in the said county taken from the Assessor's Books for 1925.

In witness whereof I have hereunto set my hand and affixed the seal *the seal* of the County Court of Henry County. Done at office in Clinton, Mo., this 9th day of January, A. D. 1926.

J. M. Smith, Clerk County Court, by M. T. Peelor, Dept. (Seal.)

[fol. 42] EXHIBIT "C"

Defendant's Exhibit No. "1"

STATE OF MISSOURI,
City of Jefferson:

April 1, 1927.

I, Roy A. McCoy, Secretary of the State Tax Commission and ex officio Secretary of the State Board of Equalization of the State of Missouri, do hereby certify that the following is a true, full and complete statement of the per centum added to or deducted from the valuation of the several classes of real and personal property, as returned by the Assessor in Henry County, the valuation of the same as equalized and adjusted by the State Board of Equalization for the taxes of 1927, and the aggregate valuation thereof in said county, viz.:

Real estate	Increase	Decrease	Valuation
Lands	.....	.....	$17,328,879
Town Lots	.....	.....	4,973,360
Total valuation of real estate	.....	.....	$22,302,239

Personal Property

Horses	.....	.....	234,900
Mules	.....	.....	166,550
Asses and Jennets	.....	.....	2,045
Neat Cattle	.....	.....	643,795
Sheep	.....	.....	21,469
Hogs	.....	.....	238,240
All other live stock	.....	.....	737
Farm machinery	.....	.....	169,979
Household property	.....	.....	391,235
Money, notes, bonds mortgages and other evidence of debt	.....	.....	1,095,415
Bee colonies	.....	.....	202
Motor vehicles	.....	.....	480,695

Real estate	Increase	Decrease	Valuation
Corporate companies, bank stock	.....	.....	681,140
All other personal property included in Class 11 of assessment list	.....	.....	212,275
Total valuation of personal property	.....	.....	$4,338,677
Total valuation real and personal	.....	.....	26,640,916

In testimony whereof, I have hereunto set my hand and affixed my official seal. Done at office in the City of Jefferson, this 1st day of April, 1927.

Roy A. McCoy, Secretary. (Seal.)

[fol. 43] Q. Will you tell the court what the tax books show was the assessment of the stock of the Peoples' National Bank of Clinton for the year 1927?

By Mr. Wesner: Object to that as immaterial and irrelevant; and for the further reason that said bank named isn't a party to this action.

By the Court: Overruled, for the present.

A. The valuation of the Peoples' Bank is $52770.

Q. Now the Clinton National Bank?

By Mr. Wesner: The same objection.

By the Court: Same ruling.

A. $76130.

Q. The Citizens Bank of Clinton?

By Mr. Wesner: Same objection.

By Court: Same ruling.

A. $20570.

Q. The Brinkerhoff-Faris Trust and Savings Co.?

By Mr. Wesner: Same objection.

By the Court: Same ruling.

A. $144660.

Q. That's all; thank you.

(Witness excused.)

By Mr. C. A. Calvird, Jr.: We want to make further objection to all of this testimony that these—showing the amount of the assessments of these banks, doesn't show the property upon which the assessment was made, nor the amount thereof; it doesn't tend to prove any issue in the [fol. 44] case whatever; it is wholly immaterial and irrelevant, and we ask that it all be stricken out.

By the Court: Objection overruled; request refused.

Mr. W. O. Hill, of lawful age, being produced, sworn and examined by Mr. Montgomery, testified in behalf of plaintiff, as follows:

Q. Mr. Hill, will you state to the stenographer your name, age and occupation?

A. Walter O. Hill—sir?

Q. Please state your name, age and occupation?

A. Walter O. Hill, age 38; county treasurer.

Q. How long have you been county treasurer?

A. Eight years.

Q. You are the defendant in this suit?

A. Yes, sir.

Q. Beg pardon—how long have you been county treasurer?

A. Eight years.

Q. And ex-officio collector?

A. Yes, sir.

Q. Will you please state to the court what percentage of the true value stocks of merchandise of merchants in Clinton Township were assessed as of June 1st, 1926?

By Mr. Wesner: I object to that.

By Mr. Calvird: Object, for the reason, they can't go into the valuation placed on specific items of personal property; and object for the further reason that they make no showing that the witness is qualified to pass upon the [fol. 45] values of the stocks of goods of the merchants in Clinton Township, or that he has any means of knowing the valuation of the stocks of goods of the merchants of Clinton Township, or make any inventory thereof.

By Mr. Rucker: He is the defendant; he is a party, the rule is different as to qualifying him. Property, for the

purposes of assessment, is divided into fourteen classes, and the courts are uniform in holding that in a case of this character, when you can show that there has been discrimination in any one of the fourteen classes, that that is enough to entitle plaintiff to the relief sought. It is one of the fourteen classes we are inquiring about.

By Mr. Calvird: I object to it for the further reason, that they are attempting to qualify the witness as an expert, and the values of property isn't to be determined by expert testimony.

By Mr. Wesner: I object to it for the further reason, that the assessment by the assessing officers, the County Board of Equalization and the value fixed by the State Board of Equalization, are conclusive judgments, and the law presumes that the officers who were performing the duty have assessed it at its true value, as required by statute; and any testimony to be given by this witness, as to what his opinion or conclusion is as to the value of the property, in whatever class it might be, is immaterial and [fol. 46] irrelevant at this time. Further object that this testimony—or that the testimony of this witness, as sought at this time, is for the purpose of attempting to prove a chain of valuations fixed by the assessing officers of Clinton Township in Henry County and the State of Missouri, as an endeavor and attempt to prove fraud, without laying the ground or foundation in the showing of any concoction or scheme of such state officers so acting, and it is immaterial and premature at this time.

By Mr. Rucker: There are two kinds of fraud; we are not charging malice; where it is established that there has been an assessment at full valuation on one class of property, and an assessment on fractional values on other classes of property, that is what is known as constructive or legal fraud.

By the Court: Any act is judged by its effect, not as to its motive—you are not seeking to prove by this witness that the values of these properties were; you are seeking to show what they were assessed at?

By Mr. Montgomery: We are trying to show by this witness an admission that he has already made, as defendant in this case; that classes of goods in this township, on June 1st, 1926, were assessed at not to exceed seventy-five per cent of that value; that admission having the same

effect as an admission contained in this answer, which is signed by his lawyers.

[fol. 47] By Mr. Calvird: He hasn't made that admission in court yet.

By Mr Rucker: Let us hear the testimony.

By Mr. Calvird: If Your Honor please, they are limited to proof by this witness that stocks of goods of merchants in Clinton Township is assessed at less than one hundred per cent of its real value in money; now then in this instance the county clerk and not Mr. Hill is the assessor or county clerk; the county clerk assesses—goes to these merchants and takes their assessment; how could Mr. Hill know what the value of the stock of goods, and fixtures, that merchants in Clinton Township had on the first day of June? It would be impossible for him to know; and to give his opinion here and overturn the assessment that has been made, of the proper officer who had the duty of making it—of making that assessment could be no more than opinion testimony, or the testimony of one trying to qualify as an expert, and testifying to a value isn't—cannot be proven by expert testimony; land and stocks of goods isn't subject to any definite value, but it is determined by various circumstances—what one is willing to sell it for and what one is willing to give for it.

By the Court: I would like to know whether you are asking the witness whether he is acquainted with the values of these stocks of goods?

By Mr. Rucker: No; asking him if he knows what proportion of its true value the assessed value is—whether he knows that fact, as defendant.

[fol. 48] By the Court: How would he know?

By Mr. Rucker: That is a question the court would have to determine in hearing his testimony.

By Mr. Wesner: We make the further objection, that the question is entirely too general, and that the witness hasn't qualified himself to know the value of any of the stocks of merchandise in Clinton, or any place else and that the question calls for an answer clearly the witness' own opinion and own conclusion, without any qualificational basis whatever. I again renew the objection, that the question is asked for the purpose of attempting to show, or to establish, as Mr. Rucker says, what he terms

legal fraud, when, as a matter of fact, there is no basis, no ground laid for the testimony, and no scheme, nor no act, system or mode of taxation or finding or assessing of values that has been proven to be discriminatory against plaintiff or any other person who may have an interest in the subject matter of this suit.

By Mr. Rucker: You can't prove the scheme in one sentence; it would have to be followed up; you can't do it all in one sentence.

By Mr. Wesner: No, but they can introduce testimony of specific acts that they complain—by reason of which they complain they are injured; they must prove some intent, design or method, or some scale by which it came about, and that they haven't done.

[fol. 49] By Mr. Conrad: There is a further objection to the question; that is, that the taxation of merchants stands in a class by itself; the merchants' assessment is taken by the county clerk, while the assessment of other property is taken by the township assessor. The taxation of other property, except merchants, is based on the valuation on June 1st, and the tax is collected the second fall thereafter, while the taxation of merchants is based on the value of property that they have between the first Monday of March and the First Monday of June of that year, and the tax is collected that same fall, so we add to this objection, and we think it is objectionable, because it seeks to put in the same class those things which do not belong in the same class.

Question read by the stenographer:

Q. Will you please state to the court what percentage of the true value stocks of merchandise of merchants in Clinton Township were assessed, as of June 1st, 1926?

By the Court: Well, I think he can answer that question. I will consider his qualification to testify to those things, and everything else connected with the case. I will let him answer for the present, subject to the objection.

By Mr. Conrad: There was another objection there, because, under our scheme of taxation, a man who puts his money—ready cash, into a stock of goods in that year, the [fol. 50] tax of which is verified through immediately, he pays a tax on the money and on the stock, both.

By the Court: Well, they are asking as to what percentage—answer, if you know?

Q. Just answer the question?

A. Well, in my opinion—I don't know, but, in my opinion——

By Mr. Wesner: Object to him stating—

By Mr. Calvird: His own answer disqualifies him; and we object.

By the Court: Gentlemen, I don't think you have qualified the witness as an expert.

By Mr. Montgomery: We are not offering him as an expert, at all. He can only answer as to his opinion; it is perfectly right that he should, because value is a matter of opinion.

By the Court: I will let him answer the question.

Q. Now just answer the question?

A. Well, my own opinion is, that they are assessed at about seventy-five per cent of their value.

That's all.

By Mr. Wesner: We want to know if the stenographer got the meaning of the first answer of this witness' testimony; for the purpose of the record.

By the Court: You don't know?

A. No, sir.

By the Court: But that is just your opinion?

A. Yes, sir.

By Mr. Montgomery:

Q. Mr. Hill, isn't it a matter of common knowledge in [fol. 51] Clinton Township, that these merchants' stocks aren't assessed at over seventy-five per cent of their true value?

By Mr. Wesner: I object to the witness testifying as to what the common knowledge is.

By the Court: I think that is objectionable. I will sustain that objection.

To which ruling the plaintiff then and there excepted, and now excepts.

Q. Mr. Hill, will you please tell us whether or not you have heard this matter of the assessment of merchants'

stocks discussed by the merchants and by assessors, and by other persons concerned?

By Mr. Wesner: Object to that as hearsay and immaterial and irrelevant.

By the Court: Objection sustained.

To which ruling the plaintiff then and there excepted; and now excepts.

(Witness excused.)

Mr. H. P. FARIS, of lawful age, being produced, sworn and examined by Mr. Montgomery, testified in behalf of plaintiff as follows:

(An adjournment taken here for dinner.)

A paper is marked Exhibit D.

By Mr. Rucker: I desire to offer in evidence Exhibit D, which is an aggregate abstract of the taxable property and its valuation, of the County of Henry, State of Missouri, on the 1st of June, 1926, set out in assessors' book for the year 1927, under the seal of the County Court of Henry County, signed by R. E. Dooley, County Clerk.

By Mr. Wesner: We object to the introduction of Exhibit D, for the reason it is immaterial and irrelevant; and further reason that it is only an aggregate of the abstract assessment, it is marked on the back as being merely a copy, and the assessment itself is the best evidence. I also want to interpose the same objection as to Exhibit A and Exhibit B.

By the Court: Objection overruled.

[fol. 52]

EXHIBIT "D"

An aggregate abstract of the taxable property and its valuation, in the County of Henry, State of Missouri, on the 1st day of June, 1926, as set out in the Assessors book for the year 1927.

Real estate	Number of	Valuation	Average value
Acres on the book (include local assessment of land owned by public utilities and Insurance companies).	460550	$17328879	$37.62
Town Lots on the book (include local assessment of lots owned by public utilities and Ins., Companies)..	8853	4973360	561.71
Total valuation of real estate		$22302239	
Personal property (include under proper classification, local assessment of personal property owned by public utilities)	Number of	Valuation	Average value
Horses	7418	234900	$31.66
Mules	3492	166550	47.69
Asses & Jennets	37	2045	55.27
Neat Cattle	21620	643795	29.77
Sheep	4669	21469	4.59
Hogs	17123	238240	13.91
All other live stock	205	737	3.59
Farm Machinery		169979	....
Household property		391235	....
Money, notes, bonds & other evidence of debt		1095415	....
Bee colonies	145	202	1.39
Motor vehicles	3224	480695	149.09
Corporate companies, bank stock		681140	
All other personal property included in class 11 of assessment list		212275	
Total valuation personal property		4338677	
Total Real estate		$22302239	
Total personal property		4338677	
Total taxable property		$26640916	

I, Ray E. Dooley, Clerk of the County Court of Henry County, Missouri, do hereby certify that the foregoing is a true, complete and correct abstract of the taxable property in the said county taken from the Assessors Book for 1927.

In witness whereof I rave hereunto set my hand and affixed the seal of the County Court of Henry County. Done at office in Clinton, Mo., this 15th day of February, A. D. 1927.

Ray E. Dooley, Clerk County Court.

[fol. 53] Q. Will you tell the court your name?

A. H. P. Faris.

Q. Your age, place of residence and occupation?

A. Herman P. Faris; seventy years old; I live in Clinton, Mo., president of the Brinkerhoff-Faris Trust & Savings Co., doing a general banking business.

Q. How long have you resided in Clinton?

A. Since 1867.

Q. How long have you been connected with the Brinkerhoff-Faris Savings & Trust Co.?

A. I first began business with Mr. Brinkerhoff, July 10th, 1873—55 and a half years ago.

Q. Have you been continuously with that concern?

A. With two years' exception.

Q. How long, during that period, have you been the chief executive officer of that institution?

A. Since 1882, I have been the manager in chief, for the reason that Mr. Lucas was president most of the time——

Q. He was a non-resident?

A. Yes, sir.

Q. You were the chief executive officer in it since then, and attended to its business?

A. Yes, sir.

Q. To what extent has your business given you occasion and opportunity to become familiar with values of real and personal property in Clinton Township and the City of Clinton?

A. First class.

Q. I beg pardon?

A. First class opportunity.

[fol. 54] Q. In what way have your duties required you to acquaint your mind with these values?

A. Well, my business has been—probably seventy-five per cent—with the farming class; I have loaned money to them continuously on their farms, inspecting them and passing judgment on their values.

Q. How about personal property?

A. I have loaned money to them; have bought and sold, myself, both real and personal property.

Q. Are you employed by persons buying and selling property and have you conducted sales and exchanges for others and have you transferred, real and personal property?

A. Not so much personal property; but in real estate quite largely.

Q. State whether or not you are acquainted with the reasonable values of personal property in the City of Clinton,

in Clinton Township of this County, and in Henry County, also, on June first, 1926, such as live-stock—horses, hogs, cattle, sheep, farming implements, household goods, and other taxable property?

A. I am.

By Mr. Calvird: We object, indefinite answer covering the branches of property—his knowledge of their values—which is a general statement, without any particular qualification to answer; it is a conclusion, as to the different classes; it would be a mere opinion of the witness.

By the Court: Objection overruled.

Q. Mr. Faris, will you please state whether or not sheep, [fol. 55] in Clinton Township and the City of Clinton—if there were any here—were assessed—and in Henry County, also—were assessed, as of June 1st, 1926, at their true cash value?

A. They were not.

By Mr. Wesner: Just a monent—we object; calling for a conclusion and an indefinite answer; and, in addition, it is an attempt to qualify the values fixed by the finding and judgment of the State Board of Equalization, which is at this time immaterial and irrelevant; and further object, that it is singling out individual, distinct and single species of property, in an attempt to attack the judgment and finding of the State Board of Equalization, without taking into consideration the different values of the different animals where, especially sheep owned by different people over the County, as equalized by that Board with all property—with other property; and isn't proper testimony to be offered by this witness at this time.

By the Court: Objection overruled.

Q. Answer the question?

A. The question again, please?

Q. (Read by stenographer.) Mr. Faris, will you please state whether or not sheep, in Clinton Township and the City of Clinton—if there were any here—were assessed—and in Henry County, also—were assessed, as of June 1st., 1926, at their true cash value?

A. They were not.

Q. What percentage, Mr. Faris, did the assessed value of sheep in Clinton Township, bear to their market value, as of June 1st., 1926?

[fol. 56] By Mr. Wesner: I object to that for the same reasons stated as to the prior question, by reason of the fact it is mere opinion of the witness, and a conclusion as to what the value may be; further object, that the value fixed and found and assessed by the assessing officers of Clinton Township, Henry County, State of Missouri, is conclusive; for the further reason; without qualifying as an expect on values—and it isn't a matter for expert testimony.

By Mr. Montgomery: Of course, if each question asked each expert in this case is objected to, as the question is asked, we will be until the middle of next week getting plaintiff's case before the jury—or the Court. We had an understanding with these gentlemen, I thought, that one objection would suffice.

By the Court: I was going suggest that these objections you assign now, shall be understood to apply to all testimony of this character.

By Mr. Wesner: Out of consideration for the Court, we will assign these objections now to all questions asked the witnesses hereafter; with right reserved to interpose any additional objections necessary.

By the Court: Yes, all right.

Q. What percentage—what relation, did the assessed valuation of sheep in Clinton Township, as of June 1st., 1926, bear to the actual market value?

A. Less than fifty per cent.

[fol. 57] Q. Less than the actual value?

A. Less than fifty per cent of the actual value; they were assessed—they were assessed at less than $5.00, you couldn't buy an old ewe for that.

Q. Will you tell us what the quotations were on sheep in the Kansas City market, on the 1st day of June—refresh your memory, if necessary to do so, from any standard market quotation you may have within your reach?

By Mr. Calvird: I object to that, for the additional reason, it isn't the best evidence—it is hearsay testimony.

By Mr. Wesner: The further objection, that the market quotation is the market quotation for Kansas City, Missouri; not the market quotation within and for Henry County, nor evidence of values in Henry County June 1st, 1926.

Q. Answer the question, as to sheep, now?

A. I stated that in the previous answer.

Q. You gave the percentage in your previous answer——

A. I said nothing about lambs; and lambs were pretty extensive—

Q. What is this (refers witness to market quotation in paper)?

By Mr. Wesner: What is the date of the paper?

A. The 1st day of June. This is the Kansas City Daily Drovers' Telegram, published in Kansas City.

Q. How is it regarded——

A. June the 1st, 1926; and is the standard for the market of this district.

[fol. 58] By Mr. Wesner: Object, voluntary statement, it is the standard for the market of this district, because there is no such evidence as that here; and ask the court to strike it out.

By the Court: Well, I will let it stand.

Q. What was the quotation on lambs?

A. Lambs—$17., $16.50 to $17., per hundred weight.

Q. How much weight will a suckling lamb take on?

A. It depends, of course, on how long they let them run with the ewes; but they usually run until ready for market—they run from 50 to 75 pounds.

Q. Now then it is simply a mathematical calculation to figure what it would be worth—what is the quotation on ewes?

A. I find ewes were—187 pounders brought five dollars—they were common.

Q. What is the quotation on wethers?

A. 148 pound wethers were $7.50.

Q. Did you own any sheep in that year?

A. I did—not in Clinton Township.

Q. Mr. Farris—refresh your memory, if it be necessary to do so—from current stock quotations of the market, as of June 1st, 1926, will you state to the court what percentage of the actual value (the market value) of cattle on that date was the assessed value of cattle on that date?

A. The assessed value of cattle in Clinton Township was less than thirty dollars—not counting the sucking calves, not included in the assessment. The cattle would take in

yearlings and stock cattle, milch cows, calves not being [fol. 59] assessed, etc., it is safe to say the average wouldn't be less than sixty dollars a head. About sixty dollars per head.

Q. Do you know what the assessed valuation was per head in this township?

A. In this township, not thirty dollars.

Q. I will ask you the same question in relation to hogs, the assessed valuation, compared to the actual value of hogs?

A. I think the assessed valuation of hogs in Clinton Township was a little less than——

Q. $13.90?

A. I was going to say, a little less than fourteen dollars; they would run all the way from $13 to $14.

Q. Per hundred?

A. Per hundred—to fourteen dollars; leaving out the sucking pigs, that weren't assessed. I would think the average, beginning with shoats and going up to heavy breeding sows, I would say the average weight, not less than 150 pounds, and the average price not less than—or more than fourteen dollars on the 100 pounds weight.

Q. Fourteen dollars per hundred?

A. Per hundred.

Q. And that would make it about how much per hog?

A. $21, not over $21. $21 would be the maximum.

Q. You have said in your testimony that lambs—sucking lambs, and sucking calves, and sucking pigs weren't assessed; what is the fact about that?

A. The rule, as I understand it, is that no sucking animal is included in the assessment list; but excluded from the assessment list.

[fol. 60] Q. Was that the rule followed in 1926?

A. I think it was.

By Mr. Wesner: I object, unless he knows.

Q. Now do you know whether it was?

By Mr. Calvrid: We now renew the objection, in the first place, as originally stated, then we object again to his testifying, unless he knows.

By the Court: Objection overruled.

Q. Well, do you know that that plan was followed?

A. Oh, as well as a man can know anything that he didn't actually figure out himself.

By Mr. Wesner: Submit that he hasn't answered the question; and ask that the statement made be stricken out.

Q. Do you mean yes, or no—that you know it?

A. Well, to come right down to the facts of the case the assessor told me so, that is from the assessor, himself.

Q. Well, don't you know, as a matter of fact—do you know, as a matter of fact, whether or not it is the policy of assessors in Henry County—at least in Clinton Township, not to include any sucking lambs, pigs or calves or colts, or any sucking animals?

A. My own personal knowledge—

By Mr. Wesner: We object——

By Mr. Calvrid: We object to the testimony as to the policy; it is a quest[illegible]n of what was done in this particular case.

By the Court: Well, if it was the custom—the usual custom.

[fol. 61] By Mr. Wesner: Object to him stating anything but what was done.

A. Of my own personal knowledge, in Clinton Township, I couldn't say; my stock was down in Osage Township.

Q. What was done in Osage Township?

By Mr. Wesner: We object to that; none of the plaintiffs reside in Osage Township.

By the Court: He can state if the practice has been uniform in that particular.

A. I don't think that we have ever given in any sucking animals in our assessment on the ranch in Osage Township; I don't think that we ever have—not to my knowledge.

By Mr. Wesner: Object to the answer, and ask that it be stricken out; because it is admitted, as to his own experience in a single township; and couldn't prove the policy.

By Mr. Montgomery: He has already testified that the assessor in this township—the assessor in one—told him

it was the policy not to include sucking animals in their manner of assessment.

By the Court: Well, that answer, I will let go in, subject to your objection

Q. Do you know what the policy was, with reference to the assessment of sucking lambs?

By Mr. Wesner: Object to a repetition.

Question withdrawn.

Q. Do you know what the policy was, with reference to the assessment of sheep?

[fol. 62] By Mr. Wesner: Object to that, for the reason the witness has already testified?

A. Relative to sheep?

Q. Yes?

A. Why, outside of some commons that was sometimes thrown out, I think they were probably all assessed, except lambs; I don't think sucking lambs were.

Q. What did they assess them at, flat rate?

A. In Clinton Township, I think a flat rate of five dollars; I don't think it figures out five dollars; I think the intention was to make it a flat rate of $5.00.

By Mr. Wesner: Object to the answer, and ask that it be stricken out; it doesn't show knowledge; he says, I think.

By the Court: Well, it's his opinion.

By Mr. Wesner: We object to his giving his opinion on that subject.

By the Court: Well, he says he was dealing in stock, and familiar with the practice.

Q. Mr. Farris, why did you say you think there was a flat rate of about five dollars?

By Mr. Wesner: He has already answered the question; and that calls for a conclusion.

By the Court: Let him answer the question.

A. Because the assessor told me so.

Q. Do you know where—what instructions, if any, the assessor had, before starting out to assess, with reference to putting a flat rate on sheep?

A. The county court calls in the assessors, usually some-
[fol. 63] time in April pays them their per diem for attendance—and they go over these matters, and they adopt the rule.

Q. Was there such a meeting held in the spring of 1926?

A. I couldn't find the record; except I could find out where they ordered them to be paid.

Q. Paid for what—for attending the meeting?

A. Yes, sir; found the record for the meeting of both, in 1927 and in 1926; didn't find every one of the warrants they had drawn to the assessors for attendance.

Q. Have you any means of knowing—have you heard what took place at that meeting, with reference to the instructions——

By Mr. Wesner: I object to that, the records of the meeting is the best evidence; what he may have heard, is clearly hearsay and immaterial.

Question withdrawn.

Q. State whether or not the assessor told you that he was given instructions about assessing sheep in Clinton Township, at that meeting?

By Mr. Wesner: Object, until he fixes the time and place.

Q. Well, in the Spring of 1926?

By Mr. Wesner: You mean as to only what the assessor told him, and not all the circumstances?

By Mr. Calvird: Further, renew the objection, whatever instructions he might have is immaterial.

[fol. 64] Q. Question read: State whether or not the assessor told you that he was given instructions as to assessing sheep in Clinton Township, at that meeting—well, in the spring of 1926?

A. He told you, in my presence.

Q. What did he tell me?

A. He told you the sucking animals were excluded, and sheep were put in at five dollars flat rate, under instructions from the county court.

Q. Now, Mr. Farris, will you please state what percentage of their actual value mules were assessed in Clinton Township, as of June 1st, 1926?

A. I would have to refresh my memory from a copy I made at the time (paper shown to witness). A. They were assessed at——

By Mr. Wesner: I object to the witness refreshing his memory from some private note a matter that isn't in evidence; we have had no opportunity to examine it; don't know what it contains.

By the Court: You might tell what it is.

A. They were assessed at a little over $45—$45 plus, less than $46. They were worth actually from $60 to $125 per head.

By Mr. Wesner: Object again to his using his note, because it is clear from the testimony—from his own copy of it as the assessments of various property he is testifying about, when the best evidence is the assessment books themselves; and ask that his testimony be stricken out.

[fol. 65] By the Court: Yes, they are the best evidence——

By Mr. Wesner: Object to his testifying from his own notes.

By the Court: I think he better testify from the record here.

By Mr. Calvird: Object for the further reason he is giving the assessed valuation of these various classes or items of personal property, and then he is giving the actual values of those sheep, hogs, mules and cattle, from a market price quotation on the same, when there is no showing of the kind or the quality of the cattle assessed, in comparison with those on which these quotations and valuations are fixed.

By the Court: I think this paper figures on the class, and weight, etc., he isn't testifying as to that—but it will give a general view of it—of the prices. I don't think he can testify that those sheep and cattle that he was familiar with would be worth all the value that he testifies was the market in Kansas City, unless they meet the requirements of the class that they are quoted in; still, as I say, it gives us a general idea.

By the Witness: May I explain to the court?

Q. Yes.

A. I don't have to refresh my memory; never have had to refresh my memory by a paper I have got; I was speaking of my own knowledge; this quotation puts it from sixty to two hundred and fifty dollars.

[fol. 66] By Mr. Wesner: Object to that, a voluntary statement, and again ask that it be stricken out.

By the Court: He only stated that which would show his reason for stating—would show what his reason was.

A. Refreshing my memory from the paper, it is higher than I stated it.

By the Court: Is it necessary to go over these items; they have been introduced, I think, you have introduced these exhibits here?

By Mr. Montgomery: And we are now showing what the relation of the assessed value bore to the actual value.

By the Court: Well, that's what I wanted to know.

By the Witness: The average wouldn't run over sixty per cent, at the most.

Q. Now, what was the relation between the assessed value of horses, and the value of the average horses in Clinton Township?

By Mr. Wesner: May it please the court, I want to state my objections; I want to interpose the further objection that the values of these different articles of personal property and animals as now in evidence, are in these exhibits here, and that it is improper to go further into explanation of that value, and that these documents are the best evidence; and that the only thing the witness can do, if he can do anything at this time—and, as a matter of fact, we object to that—would be to give his estimate and idea, or [fol. 67] opinion, or conclusion as to what these various properties might have been worth in Henry County on June 1st, 1926.

By the Court: They are trying to show a disparity of the actual value of this—these properties, as compared with the assessed value, in order to establish that there is and has been a discrimination.

By Mr. Wesner: The assessed values are already in evidence.

By the Court: Well, they are in evidence—they are trying to compare that—I believe, Mr. Farris, you might just go over the list, and show what per cent—could you just go over the list and show the per cent?

A. Probably in the neighborhood of it; probably in the neighborhood of fifty-five to sixty per cent.

Q. You speak now, in reference to horses?

A. In reference to horses—fifty-five to sixty—possibly sixty-five; but I would say not over fifty-five to sixty per cent.

Q. Mr. Farris, do you know whether or not there is a general policy of any sort, with reference to the assessment of household goods in Clinton Township and the City of Clinton?

A. Oh, it is worse.

Q. What is the policy?

A. I say, it is worse.

Q. Tell what it is; do they assess it at ten times its value or what?

A. Well, they just lump it off.

[fol. 68] Q. In what way—too high or too low, exactly right, or how?

A. Away below; yes, sir—hardly fifty per cent of its value on household goods, in Clinton Township.

Q. How long has that been the policy?

A. Forever; I guess.

Q. How long, do you know, it has been the policy?

A. Well, fifty years.

By Mr. Wesner: Interpose the same objections as to this question.

By the Court: You make that statement on the market value on second-hand goods?

A. Well, just the ordinary run of household goods. I can tell you how it is done, if you want to know.

By the Court: Well, how?

A. Well, when they reach that point—when the assessor writes that down, I think they all do, probably about what I do. Now, Mr. Assessor, you know about the amount of goods I have in my house—eight roomed house, I don't know what it ought to be put in at, average it up with my neighbor—whatever you put in there will be all right with

me; and they say, put it in there at a nominal figure, and average it away below par—away below fifty per cent, say, all the way through, in this town.

Q. What percentage of actual value was bankstock of the Brinkerhoff-Faris Trust & Savings Co., assessed at, as of June 1st, 1926?

A. One hundred per cent, full.

[fol. 69] Q. State whether or not you made the return a hundred per cent, full?

A. We did.

Q. State whether or not you have ever tendered any part of the taxes levied against the bank stock of the Brinkerhoff-Faris Trust & Savings Co., for the year 1927?

A. We did.

By Mr. Wesner: I object to that, it is no defense to this action.

Q. What part of the assessed value did you tender?

A. We tendered seventy-five per cent.

Q. Have you the original tender with you?

A. I have it there in your papers. The collector's signature to the rejection of the tender is there in your files.

Q. All right (produces paper). I now hand you a paper marked Plaintiff's Exhibit E; and I will ask you to state to the court what that is?

A. This is a letter sent by the Brinkerhoff-Faris Trust Co., by its secretary and its cashier to the collector of Clinton Township—Mr. W. F. Carter, dated December 30th, 1927, enclosing the collector a check for $1986.18; being seventy-five per cent of the taxes on the books in the collector's office; this letter is signed by Brinkerhoff-Faris Trust and Savings Co., by H. P. Faris, treasurer, and carries this notation—"12-30-27, above tender rejected, because only seventy-five per cent of taxes," signed by "W. F. Carter." However, this is only a copy, the original should be there.

[fol. 70] By Mr. Montgomery: We will have the original here, and will identify it as Exhibit E, when we get it.

By Mr. Wesner: We reserve and press our objection to the original now.

By Mr. Montgomery: We want to lay the foundation for some testimony by offering another witness; I think I will excuse him, now, and we will finish with him later.

(Witness excused.)

By Mr. Wesner: I believe I will ask to have that instrument he offers read into the record, to keep the record at this time all smooth for the notes.

By Mr. Rucker: We withdraw that exhibit.

Mr. GEORGE HOLLIDAY, of lawful age, being produced, sworn and examined by Mr. Lee Montgomery, testified on behalf of plaintiff, as follows:

Q. Mr. Holliday, tell the court your name and your place of residence and occupation?

A. George W. Holliday; Clinton, Mo., Abstractor of Titles, land titles.

Q. Have you any other business, besides being an abstracter of titles?

A. Yes, sir; connected with the Citizens' Bank; and both Building & Loan Associations here.

Q. What relation have you to the Citizens' Bank?

A. President.

[fol. 71] Q. How long have you been president of the bank?

A. Eleven or twelve years, or a little longer.

Q. You say you are connected with a couple of Building & Loan Associations; in what way are you connected with them?

A. I am president of each one of them.

Q. How long have you been in the Building & Loan Association business?

A. Since 1923.

Q. How long have you been in the abstract business?

A. Since 1880—November 26th.

Q. And you have been banking since 1916?

A. I think it was eleven or twelve years; wouldn't be sure—quiet a while, though.

Q. Now, Mr. Holliday, state whether or not your business gives you occasion and opportunity to become familiar

with the sales, transfers and values of real and personal property in the City of Clinton and in Clinton Township and in Henry County?

A. Why, generally as to real estate matter, but as to personal property; I don't know anything about that.

Q. How about real estate?

A. I come in contact with the values of that most every day, from abstracts and the books.

Q. Do you have occasion to investigate the values of real estate, in the matter of extending credits to people, or making loans to people, in the bank and in the trust companies?

A. Only once and awhile.

[fol. 72] By Mr. Wesner: Object to that, as immaterial and irrelevant.

By the Court: Objection overruled.

A. Why—you mean with the bank down there?

Q. Banking, trust company and Building & Loan Association, or in any capacity?

A. Well, occasionally I look up matters for the bank there, yes, sir; for the Building & Loan Association we have a committee of gentlemen there that go down and view the property and present a report to Board of Directors.

Q. You don't make, then, an investigation personally, for the Building & Loan Associations?

A. No, sir.

Q. What studies, Mr. Holliday, if any, have you made of the transfers of real estate in Clinton Township, and in the City of Clinton, during the year, 1926?

A. That is, of 1926?

Q. Yes; what studies have you made?

By Mr. Wesner: Object. Immaterial and irrelevant.

By the Court. Objection overruled.

A. Well, I made a card report—that is, a card abstract, you might say, of all the transfers that had taken place in the Township—that included the City of Clinton.

Q. During what period of time?

A. Extending from the first of January, 1927, to December 31st——

Q. You mean 1926?

A. 1926, yes.

[fol. 73] Q. Now what did you show on this abstract—cards—want you to describe it in a general way—what the cards show, with reference to each conveyance?

A. The cards show the number of the card—the grantor and the grantee, the date of the instrument and its character, and date—the date filed for record; book and page where it is recorded; the consideration and description of the property conveyed, and whether they indicate an encumbrance.

Q. Now following the making of those—these abstract cards, state whether or not you compared—you ascertained the assessed valuations of these properties described in the cards?

A. We took all of our cards and went into the county treasurer's office, where they had the tax books for that year, and the assessments and so on, and we took that amount—the extension of taxes, and we wrote down then the assessed valuation of each piece of property that was conveyed.

Q. Now Mr. Holliday, what classes of conveyances did you find, with reference to conveyances which stated the actual consideration, and those which didn't state the consideration, except in nominal terms—I mean now, with reference to having conveyances which show the consideration, and which showed a consideration one dollar and other valuable consideration, or love and affection?

A. You mean the per cent of one dollar nd affection?

Q. No, I want to bring out the fact, whether or not there [fol. 74] were two classes of cards, and what you did with them?

A. Yes, sir; they had to show a consideration some don't put in the money consideration of the conveyance, and there are quite a number for one dollar. I don't think there were any just love and affection. Such were for one dollar and love and affection, or other valuable consideration.

Q. Now then you divide these cards up, then, into groups, showing the conveyance which show the consideration, and put them into one pile?

A. Those with a consideration paid; yes, sir.

Q. Then you put those that didn't show a consideration into another pile?

A. The one dollar—yes, sir.

Q. What did you do with reference—if anything—with reference to investigating the actual consideration, as to those conveyances which appeared to be for one dollar and other valuable consideration?

A. Well, if I knew the real consideration, I put it down, and in some instances we made inquiry; if we found out what it was I put it down; I didn't go all over the one dollar ones; a number of them, where it was possible to get the actual consideration.

Q. You mean you didn't learn the actual consideration of all of the one dollar ones?

A. No, sir.

Q. But such as you could learn, you put over in the pile with those that showed the actual consideration?

A. Yes; that's the way it is arranged, yes, sir.

[fol. 75] Q. Now, Mr. Holliday, did you make, or did you see made, a sum total of the considerations in that pile, and the sum total of the assessed valuations of those same properties, and how did they compare?

By Mr. Wesner: Object, because if that was done, the cards are the best evidence, if they are evidence at all.

By Mr. Rucker: This is only done for the purpose of qualifying the witness. We are perfectly willing that these cards go in, without objection from them—we don't think these cards, themselves, are competent testimony; we are simply showing—for the purpose of qualifying himself as a witness in this case, he took these statistics.

By Mr. Calvird: May I ask him this question?

By Mr. Rucker: Sure.

By Mr. Calvird:

Q. Mr. Holliday, when you took the considerations of these deeds, did you know, of your own knowledge, that that was the actual consideration that passed between the parties?

A. No, sir; just only by the record.

By Mr. Calvird: I object to the testimony of this witness; that he got the considerations off of the deeds, and compared them with the assessments of the particular property; for he knows that the consideration recited in a deed

is no evidence whatever of the actual consideration that passed between the parties; Your Honor knows that the [fol. 76] consideration expressed in a deed is often an amount which is not the true consideration—that considerations are often padded for the purposes of a resale—that the values have been padded, to trade on; and they are not actual considerations that passed between the parties at all.

By Mr. Wesner: If what Mr. Montgomery says is true, the deeds themselves are the best evidence.

By the Court: I understand from the witness, he has made these cards with the view of ascertaining what he proposes to testify, and that, in addition to that, he has, in many instances, made a personal investigation.

A. I would say a great many of them; of course, not all of them.

By the Court: No; but he is familiar with the value of the property, and I will let him testify.

Question read by stenographer:

Q. Now, Mr. Holliday, did you make, or did you see made, a sum total of the considerations in that pile, and the sum total of the assessed valuations of those same properties, and how did they compare?

By Mr. Wesner: I object to his testifying, only as to those he investigated.

By the Court: Yes; he will confine himself to that; because he made an estimate of it. He made the comparison from it.

[fol. 77] Q. Did you?

A. Yes, sir.

Q. Now, Mr. Holliday, what percentage did the assessed valuations bear to the considerations——

A. Well, I didn't——

By Mr. Wesner: I object to that.

By the Court: If he knows, and if he could calculate the per cent, I will let him state, subject to the objection.

A. I want to get clear on this; I want to make a statement. It don't make any difference to me whether this case goes one way or the other, because all I did is to in-

vestigate the figures; as I remember, there are different classifications; one was where the consideration is expressly stated in the deed that is in the record; another was where it was a dollar consideration, and afterwards we ascertained what the real consideration was; another class was a forced sale—that is, by partition, or a sale under judgment and foreclosure. Now those are classes of titles—I remember several; I don't remember exactly as to all the individual ones.

Q. What is the percentage of the assessed valuations of the total of the whole, taking them all, to the considerations?

A. The total was sixty per cent.

Q. Sixty per cent?

A. Yes, sir.

Q. In other words, the total considerations——

By Mr. Wesner: The attorney is explaining the answer to the witness—the witness testified to it, we object.

[fol. 78] A. I don't know whether it is proper for me to say, or not, but we found, for instance, we found instances where the assessed valuation was higher that the sales value; and we took and totalled the considerations up, and totalled the assessments up, and then take the per cent of it, and it made sixty per cent; including what we found over-assessed, and all the rest of them.

(Witness excused.)

By Mr. Wesner: We renew all our objections at the close of his testimony, for the reasons heretofore assigned, and ask that his testimony be stricken from the record.

By the Court: Objection overruled. Request denied.

Mr. H. P. Faris, recalled, examination continued by Mr. Montgomery, testified as follows:

Q. Reverting, Mr. Faris, to the matter of the tender; I will ask you whether or not you made any tender of any part of the tax—of state and county tax—state, county, school and road tax, for the year 1927, to the county or township collector?

A. As answered previously, we did. Here is the original tender—the original check and the original rejection of the collector (producing same).

By Mr. Calvird: We object to this evidence, because it shows the tender was made, if any was made, by check.

[fol. 79] Papers marked Exhibits F and G.

(Exhibit F being the tender and the rejection of tender made by collector, is read to the court, in words and figures as follows:)

(Exhibit G, check accompanying same, read to court as follows:)

EXHIBIT "F"

Clinton, Missouri, December 3d, 1927.

Mr. W. F. Carter, Township Collector for Clinton Township, Clinton, Missouri.

DEAR SIR: Please find enclosed our check for $1,986.18 which please apply upon the taxes assessed against our shares of stock for the year 1927.

You understand that this bank is claiming that the taxing authorities have discriminated against our share holders by assessing our bank stock at its full value, while other property in the township is being assessed at less that three-fourths of its value.

At the same time we understand that you are not admitting the soundness of our claim and that your acceptance of this payment will not stand in the way of your claiming that we owe the full amount of the taxes for 1927 as shown upon the books. You may, therefore, accept this payment without admitting the soundness of our claim and without embarrassing you in the defense of the action which we [fol. 80] are about to file for the purpose of enjoining the collection of the balance of the taxes which were assessed against us for this year.

Very truly yours, Brinkerhoff-Faris Trust & Savings Co., by H. P. Faris, Treasr.

12/30/27.

Above tender rejected because only 75% of taxes.
W. F. Carter, Coll.

Above tender made by us and rejected by Collector Dec. 30-1927—J. R. Winters, Secty. H. F. Finks, Cashier.

EXHIBIT "G"

Brinkerhoff-Faris Trust & Savings Company

Clinton, Mo., Dec. 27, 1927.

80-1409. No. —.

Pay to W. F. Carter, Coll'r, or order, $1,986.18, nineteen hundred eighty-six & 18/100 dollars.

For personal taxes on Trust Co. stockholders for 1927.

Brinkerhoff-Faris Trust & Savings Co., by H. P. Faris, Treas.

By Mr. Wesner: Renew our objections, for the reason that there was no legal tender made.

By the Court: Objection overruled.

[fol. 81] Q. Mr. Faris, I don't know whether you are familiar with the values of farm machinery in this county—are you familiar with the values of farm machinery?

A. Yes, sir.

Q. Do you know what proportion of the actual value the assessed value is on farm machinery in Clinton Township; if so state what you think it is?

A. I couldn't without that memorandum; I don't think farm machinery was included in that assessment—that list—copy of Hill's assessment maybe showed it—but—I don't believe that farm machinery was included in that.

By the Court: He said he was familiar with them—with farm machinery.

By Witness: I don't recall that farm machinery was in that.

By Mr. Wesner: I objected to the use of the memorandum awhile ago: I object to Mr. Faris giving any testimony, refreshing his memory from the memorandum, because it isn't the best evidence; the best evidence is now a part of the evidence in this case; object to him referring to a note not in testimony, and testifying from his own private memorandum.

By the Court: Objection overruled.

A. Well, I would have to state in answer to that, that I haven't made any investigation of the amount of farm-

ing machinery in Clinton Township, therefore would not be qualified to testify on that point; just know it was assessed at $6695. I have no knowledge of the amount—of [fol. 82] what the amount of farm machinery is in this township.

Q. Do you know whether or not there is more than that much in the township?

By Mr. Wesner: Object to that.

By the Court: Objection sustained.

To which ruling the plaintiff then and there excepted; and now excepts.

By Witness: I am not familiar; wouldn't be able to venture anything more than a guess.

Q. Mr. Faris, what special studies, if any, have you made, with reference to sales of real estate in Clinton Township, and of the Town of Clinton, during the year 1926?

A. I made quite a diligent study of it.

Q. Tell what sort of study?

A. In connection with Mr. Holliday's report, I verified a large number of the cards—didn't have to verify all of them, but a great many of them, for my own satisfaction; I helped in the matter of tabulating and examining, and helped run down a few cards that we were able to determine the actual consideration, which were one dollar ones—they were one dollar considerations; there weren't many of them, but there were a few that we were able to get the real consideration. Then I also helped to divide them into the different classes that you speak of; there were a few that showed the consideration of more than the assessed value—not many of them—we separated those——

[fol. 83] Q. You don't mean a consideration of more than the assessed value?

A. No; the assessed value more than the consideration—a few of them; we separated those and tabulated the proportion between the actual consideration and the assessed value of those in the different classes; it ran from fifty to 150 per cent, on the few that showed a higher assessment than consideration, but the total, all the way, when they were all got together, was just a

shade over sixty per cent—sixty and one one-hundredths per cent—a shade over sixty per cent; taking all of these classes together.

By Mr. Wesner: We are objecting to all of that.

By the Court: Yes; I understand you are objecting to everything.

Q. Now, Mr. Faris, basing your opinion upon your general knowledge of real estate values in Clinton Township, including the City of Clinton, and your knowledge of assessed valuations in Clinton Township, including the City of Clinton, what relation do the assessed valuations, for the year 1926—June 1st, 1926—bear to the actual values of such real estate?

A. Somewhere from sixty to not exceeding sixty-five per cent, as the average. There will be some—we found some—we found a few that ran 143 per cent; yet we took them into the calculation—but there were only a few.

By the Court: I understand you say there were instances where property was assessed at a higher value than the [fol. 84] value—the actual value?

A. Foreclosure sales—things of that sort; I think there were probably—stated off-hand, I would say possibly eight of them, out of two hundred cards, and we took them in; they averaged 143 per cent.

Q. They were counted in the total?

A. Yes, sir; they were counted as a total—that 143 per cent as against the others, that still only brought it up to sixty and a fraction—I think sixty and one-one-hundredths—a shadow over sixty per cent.

Q. What general classes of cards did they include—what general classes of transfers, did that include?

A. Oh, they included—by the way, there were some we didn't put in there—a few that we couldn't find assessed; that would have counted for us, but we left them out, they included everything, from one of these lots up in darkey town, to the grandest mansion here on the corner of Second and Jefferson Street.

Q. I'm asking you now what kind of transfers—whether foreclosure sales or partition?

A. If I recollect, I will say the—those that were—expressed the lower consideration—lower valuation than the

assessments, were foreclosures—deeds among heirs, or a few non-residents who were anxious to get rid of their property, and sold it cheap; all the others were the bona fide ones, and one dollar ones; all that we couldn't locate we eliminated, because we had no method of establishing or estimating them.

[fol. 85] Cross-examination.

By Mr. Wesner:

Q. Now, Mr. Faris, you aren't——

By Mr. Montgomery: Just a moment, if you will pardon me.

By Mr. Wesner: Oh, all right.

By Mr. Montgomery: One other question.

Q. Mr. Faris, state whether or not you now and then appraise real estate and personal property of dead friend's estates?

By Mr. Wesner: Object to that; it is immaterial and irrelevant.

Question withdrawn.

By Mr. Montgomery: I think we are entitled to it, on the matter of qualification, Your Honor, I neglected to put it in—he is qualified, without it.

By the Court: Well, let him answer it.

A. Quite frequently.

Q. Have you had any recent experiences that would be enlightening?

By Mr. Wesner: I don't know that it would—a special instance.

Question withdrawn.

Cross-examination resumed:

Q. Mr. Faris, you aren't an assessing officer of Clinton Township, are you?

A. I am not.

Q. You weren't last June, or June, 1926?

A. I wasn't.

Q. Nor of Henry County, Missouri?

A. I wasn't.

[fol. 86] Q. Nor of the State of Missouri?

A. I wasn't—only a taxpayer.

Q. The values that you attempt to speak of and give in evidence here are your private opinions as to the values of land?

A. Those I have just testified about; the real estate?

Q. I am asking you generally, as to all the valuations you have given in evidence?

A. The valuations of real estate were after a careful and painstaking examination of the actual——

Q. I wasn't asking you how you arrived at it?

By Mr. Montgomery: Let him answer the question—go ahead.

By Mr. Wesner: No, I didn't ask him how he arrived at it.

By Mr. Rucker: He has a right to say.

By the Court: I think it is proper.

Q. All right, answer the question, go ahead.

By the Court: Proceed.

A. As to the real estate, it was both my own personal knowledge, after more than twenty-five years practical, actual experience in buying and selling for myself and others, real estate of all kinds and character in Henry County, Missouri, and further based upon a careful and painstaking examination of the records and conveyances during the year 1926, and a comparison of the considerations therein with the assessment of the same properties, and in a few cases of the one dollar consideration cards, [fol. 87] from knowledge that I had within myself, or was able to obtain from others, as to the actual consideration paid for those properties. As to the personal property, both because of my own ownership of cattle, hogs, sheep and horses—I don't think I owned any mules—supplemented by a great familiarity with farmers and stock dealers who are continually trading in, buying and selling hogs, cattle, sheep, horses and mules, with some of the biggest

feeders and dealers in the county as my personal friends who consult me, and who our institution loans funds as needed for the purchase of such personal property; further based upon our experience in loaning money and taking chattel mortgages upon personal property—is that a full enough answer?

Q. And it is, then, a conclusion or opinion of yours reached by reason of this experience that you have just detailed?

A. That, and general observation and experience, yes, sir.

Q. Yes. You don't attempt to tell the court at this time that you know the values of all the different pieces of real estate and livestock and personal property, on June 1st, 1926?

A. I have many times stated, and I think it is literally true: there is no 160 acres of land in Henry County that I can't give you a pretty fair estimate of its value today; by reason — my knowledge of the land, and its location, and my continual handling of it in the county; as to my personal property, I've given it to you now, both as an [fol. 88] owner and as I have consulted with those who buy it and sell it.

Q. Mr. Faris, how many shares of stock are there in your plaintiff bank?

A. How many shares?

Q. Yes, sir?

A. 1050.

Q. I didn't understand?

A. 1050.

Q. What is the fair market value of those shares of stock, Mr. Faris?

By Mr. Montgomery: We object to that; it is not only immaterial, but the statute fixes what shall enter into the assessed value of bank stock for the purposes of taxation; the statute says exactly what shall be returned for taxation; and that stuff that is returned for taxation is what must be assessed; the market value doesn't come in (reads statute to court).

By the Court: I think that actual value enters into it, but not market value.

By Mr. Rucker: If they want an admission that this

bank stock is worth more than the assessed valuation, it probably is; practically all bank stock is.

By the Court: This statute directs what the president or manager of a bank shall prepare and present for taxation; and I presume that he has followed that.

By Mr. Rucker: The only objection I have to it is that it will encumber the record. I have no idea what the market value is, in the world.

[fol. 89] By the Court: Well—what was the question?

By Mr. Wesner: What the market value of the bank stock was.

By the Court: I don't think that is proper.

Q. All right. I will ask you what the true value, in money, per share, of your bank stock is?

By Mr. Montgomery: Same objection.

By the Court: Well, I think, if he knows, I will let him state.

To which ruling the plaintiff then and there excepted; and now excepts.

A. Market value—the market value?

Q. No, sir; the true value, in money?

By Mr. Montgomery: That is misleading to the witness, the natural inference, you mean market value?

By the Court: No, that would be plus his and his patrons' profit—the stockholders—he is president of the bank, and if he knows what the actual value is——

By Mr. Montgomery: As shown on the books?

By the Court: Yes.

By Mr. Montgomery: Well; I have no objection to the book, at all. I have no objection to the book value.

A. The book value is expressed in the return of June 1st, 1926.

Q. A hundred and twenty-seven dollars a share?

A. No, a hundred and seventy-eight, including real estate—I think it is $144, personal, including real estate, I [fol. 90] think $178. Whatever the return shows; that is the book value, shown on the book. I think $178 per share, including real estate—book value.

Q. My question is, what is the true value in money?

By Mr. Rucker: Do you mean what he can sell it for?

By Mr. Calvird: Yes, sir.

By Mr. Rucker: Then that is the market value; the court excluded that.

By Mr. Calvird: What he can sell it for—go out and get for it—that's what it is actually worth.

By the Court: It seems Mr. Faris has based his value upon some of the livestock here, according to the market value from the quotations from the papers; of course, the rule ought to work both ways, but—if it wasn't circumscribed—now, this statute—now he has said that he put this value at the face value, or the book value of the stock, and that is $178. It seems to me, according to that——

By Mr. Rucker: If he knows what the market value is; let him say.

By the Court: I don't think I care anything about that; he can, though, if he doesn't mind.

A. The total book value was $178668.12. Taking off the real estate, it left it practically $138 per share, with the real estate off; of course the real estate should be on it; for all of us know it has no market value; there is practically no market for the stock; the last I know of selling [fol. 91] was $120 per share, in the last—quite recently and I don't know any selling even for that for quite awhile; there is none on the market, except once and awhile when somebody dies; you couldn't buy mine for a good deal more than that, I will say frankly; because it carries with it the control of the company.

Q. Mr. Faris, whose stock was it you say sold for $120?

By Mr. Rucker: Object to that; encumbering the record.

By the Court: I don't think that it is necessary just to put the real value upon this; he has put the real value upon this that is greater than this that was sold; of course he doesn't want to sell his stock, and control of the institution and good will—that is an intangible value.

Q. I want the actual value?

A. That's what it brought; $120 per share, the last sale I know of; I have assesed it at $178. Includes real estate.

Q. You don't contend, Mr. Faris, that that is the actual, true value in money of the stock that you hold in the bank?

A. I told you you couldn't buy mine for that.

By Mr. Montgomery: That is an improper question.

By the Court: Yes.

By Witness: I put it at that; that's the last sale I know of. Of course, you couldn't buy mine for that, for $120; I [fol. 92] don't have any for sale at that; when somebody dies and they throw it on the market at a price—what it will bring.

(Witness excused.)

By Mr. Montgomery: We have a lot of witnesses here to prove something we wanted the gentlemen to admit; they haven't admitted; brought 15 or 18 witnesses here—13 or 14 are here, from out of town; so that it would be possible for them to get back on the afternoon train, we would like Your Honor's permission and the permission of counsel on the other side, to put them on out of turn, so that they will not have to be here tomorrow.

By Mr. Calvird: That's all right.

By Mr. Montgomery: Thanks, Mr. Calvird.

Mr. A. L. DUFF, of lawful age, being produced, sworn and examined by Mr. Rucker, testified in behalf of plaintiff, as follows:

Q. Where do you reside?

A. Windsor, Mo.

Q. What is your occupation?

A. Banking.

Q. With what bank are you connected?

A. The First National Bank.

Q. Are you acquainted with the return made by the National Bank of Windsor, as to the value of the stock, as of the first of June, 1926?

A. I wouldn't be able to state now; I made the return, though, at that time.

Q. Did that return truly show the value of that stock?

A. The 1926 value; yes, sir.

[fol. 93] Q. I mean, the book value, as required by the statute?

A. Yes, sir.

Q. What was the assessment; what proportion? A. A hundred per cent.

Cross-examination.

By Mr. Calvird:

Q. What was the actual value of that stock—was the actual value of that stock greater than the book value?

By Mr. Rucker: I object to that; he is going into the market value again.

By the Court: I will sustain the objection.

By Mr. Calvird: We object to all the testimony of these witnesses and of this witness, it is understood?

By the Court: Yes.

(Witness excused.)

Mr. R. K. Palmer, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of plaintiff, as follows:

Q. State your name, please?
A. R. K. Palmer.
Q. Where do you reside?
A. Windsor, Mo.
Q. What is your occupation?
A. Banking.
Q. With what bank are you connected?
A. Citizens' Bank.
Q. Did you make a return of the Citizens' Bank of Windsor, showing the financial condition of the bank as of the 1st of June, 1926?
A. Yes, sir.

[fol. 94] By Mr. Wesner: Object to that; the return would show for itself, and it is the best evidence.

By the Court: He can state.

Q. Did that return truly show the book value of the stock, as of that date?
A. Yes, sir.

By Mr. Wesner: Object, the return is the best evidence.

By Mr. Montgomery: We will concede that you make that objection to every question; no use of wasting time, everybody who testifies.

By Mr. Wesner: This is an important case, and I am here to protect my client, and I am going to make the objection, in all respect, in all due respect to Your Honor, and I want a ruling on them.

By the Court: Do you want a ruling separately on each one?

By Mr. Wesner: I object as to these particular witnesses; I agreed as to the objections on values; my objections as to what these gentlemen testify to now, I am making a special objection, to him testifying in this instance as to what a return that he says he made shows, from the fact that the return is the best evidence.

By the Court: Objection overruled.

By Mr. Wesner: I submit to the court, that the returns will speak for themselves.

By the Court: Yes; but I don't know what the return shows; all he wants to know is if he made a true return.

By Mr. Wesner: You aren't introducing them in testimony, then?

[fol. 95] By the Court: He can answer that question.

Q. Was it a true return of the book value?

A. Yes, sir.

Q. What was the proportion of the assesed valuation as compared with the return valuation; that actual valuation shown by the return?

By Mr. Wesner: I submit the return would show.

A. A hundred cents on the dollar.

By Mr. Calvird: I want to renew my objection again, made to the other witness, and to all these witnesses. I asked them if the actual value of the stock isn't greater than the book value. You sustained the objection to that question, and I want to put the same question to these witnesses.

By the Court: Well, he hasn't stated what he returned.

By Mr. Calvird: He said the book value.

By the Court: He didn't state what it was.

By Mr. Rucker: No; just the bock value.

By Mr. Calvird: I asked this witness and the others, if the actual value of the stock in money isn't greater than the book value that they returned; you sustain the objection to that; and the other witnesses, I presume, will answer

yes. I want, then, to make an offer of proof by these witnesses, that their answer to that will be in the affirmative, and then I needn't put it any more.

By Mr. Rucker: All right, let the record show that of each one of them the same question is asked, and the same [fol. 96] objection is made, and the same ruling of the court, and the same offer of proof on your part; let the stenographer write that into the record, on the part of each witness on this matter. We have seventeen witnesses on those questions—we have 17 witnesses here on this matter, and the questions we are going to ask will be identical.

By the Court: I don't see—can't understand why you take up this time in the matter; you claim that the book value is the controlling fact in the case?

By Mr. Rucker: Your Honor, we are not offering it on the question of whether they made a true return, or not; we are offering to show the scheme of the assessing officers of this county; assessing banks of this county at a hundred cents on the dollar, and these gentlemen won't admit that was done, and that they knew it was done. They won't admit it.

By Mr. Wesner: In addition to the objection made by Mr. Calvird, I will make the objection——

By the Court: I think Mr. Faris testified $178. They don't say what it was; I have no way of knowing; of course, if that is told me, it would be the same as Mr. Faris' statement; but I have no idea from——

By Mr. Rucker: What we are getting at is the scheme of assessment; not the amount.

By the Court: I understand.

[fol. 97] Q. Were you familiar with the statutory requirements, with reference to returns made by banks?

A. Yes, sir.

Q. Did you follow the statute in making your return?

A. Absolutely.

By Mr. Wesner: I object; the return shows for itself, whether he did, or didn't.

Q. In the return you made, did you give the value of all real estate represented by your shares of stock, together with all reserve funds, undivided profits, premiums and earnings, and other values belonging to the bank?

A. Yes, sir.

Q. Now taking all that into consideration, what assessment was made—that is, what proportion of the return was reflected in the assessed valuation?

A. A hundred cents on the dollar.

By Mr. Wesner: I just make one general objection to all of this testimony, and then will let Mr. Rucker go ahead and examine all the witnesses he wants to on that point. Mr. Calvird has made the general objection, and we stand upon the proposition that we offer to show the true value in money of the stock; now I make the point, and object to the court at this time, that the returns themselves are the best evidence, and that this witness and no other witness called on his point, can testify to any facts outside of that return, or as to the return affecting it, as to its effect; that it is the best evidence, and the only evidence.

[fol. 98] By the Court: Objection overruled at the present time.

(Witness excused.)

Mr. R. E. Major, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of the plaintiff, as follows:

Q. State your name?

A. R. E. Major.

Q. Where do you reside?

A. Windsor.

Q. What is your occupation?

A. Cashier of the Farmers Bank, of Windsor.

Q. Did you make return for that bank, purporting to show the true value of the stock, as of the 1st of June, 1926?

A. The book value of the stock? The book value.

Q. Yes, sir. Did you include in that all real estate represented by the shares of stock, together with all reserve funds, undivided profits, premiums and earnings, and all other values belonging to the bank?

A. Yes, sir.

Q. Were you familiar with the statutory requirements?

A. Yes, sir.

Q. Was that a true return of the value of the stock, taking those requirements into consideration?

A. Yes, sir.

Q. Now do you know what proportion of the true value, as shown by your return, is reflected in the assessed valuation, fixed by the assessment?

A. You mean the percentage?

Q. Yes, sir?

A. A hundred per cent.

[fol. 99] By Mr. Calvird: You mean the book value?

A. The book value, I mean; yes, sir.

(Witness excused.)

Mr. H. C. Whitaker, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of the plaintiff, as follows:

Q. State your name?

A. H. C. Whitaker.

Q. What is your occupation?

A. Cashier of the Farmers' Bank of Blairstown.

Q. Did you make return for the bank, purporting to show the book value of the bank stock, as of the 1st day of June, 1926?

A. Yes, sir.

Q. Were you acquainted with the provisions of the statute governing returns to be made by banks?

A. Yes, sir.

Q. Did you, in the return, show the value of all real estate represented by the shares of stock, together with the reserve funds, undivided profits, premiums, earnings, belonging to the bank?

A. Yes, sir.

Q. Did the return show the true book value?

A. Yes, sir.

Q. What proportion of the true value was represented in the assessed value?

A. A hundred per cent.

By Mr. Calvird: You mean the true value or the book value?

A. Well book value, and true value.

Q. The stock is actually worth more than book value?

A. I think not.

[fol. 100] By Mr. Montgomery: I make the same objection that, if Your Honor please, Your Honor has ruled on that several times.

By Mr. Calvird: True value and book value are two different things. The book value, I presume, is $100 a share, plus surplus.

By Mr. Montgomery: No, that is par value.

By the Court: You understand that to be the true value?

By Witness: Yes, sir.

(Witness excused.)

Mr. M. B. Witherspoon, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of the plaintiff, as follows:

Q. State your name?

A. M. B. Witherspoon, Deepwater, Missouri.

Q. What is your occupation?

A. Cashier of the Bank of Deepwater.

Q. How long have you been cashier of the Bank of Deepwater?

A. Over twenty years.

Q. How long have you been a resident of Henry County?

A. All my life.

Q. Did you make the return for your bank, purporting to show the face value of the stock, as of the 1st of June, 1926?

A. Yes, sir.

Q. Did that return include the real estate, all of it represented by said shares of stock, together with the reserve funds, undivided profits, premiums, the earnings and all other values belonging to the bank?

A. Yes, sir.

[fol. 101] Q. And truly showed this value of the stock?

A. Yes.

Q. What proportion of the value, as shown by the return, did the assessed valuation bear to it?

A. A hundred per cent.

Q. Are you acquainted with the value of livestock in this county?

A. Well; yes.

Q. Do you know what the value of sheep in this county were, on the 1st of June, 1926?

A. Well; that's three years ago.

Q. Sir?

A. Two and a half years ago?

Q. Yes, sir?

A. In a way; yes.

By Mr. Wesner: I object to him stating, unless he knows.

By Mr. Rucker: I don't think it is proper, if he just knows in a way.

Q. Now do you know the publication known as the Daily Drovers' Telegram?

A. Yes, sir.

Q. What is it?

A. Well, it is a stock paper; gives the market.

Q. A newspaper?

A. Yes, sir.

Q. Published how often?

A. Every day.

Q. Do you know whether it is reliable, or not?

A. I think so.

By Mr. Wesner: Object to that; immaterial and improper.

By the Court: Objection overruled.

Q. Do you know whether it is reliable, or not?

A. I think it is; yes.

[fol. 102] Q. Do you know whether it is in general use by stockmen in this county, or not?

A. It is.

Q. And depended upon by them in deals?

A. Yes, sir.

Q. I will ask you (showing witness paper), to refresh your memory, by examining a copy of the Kansas City Daily Drovers' Telegram of date of June 1st, 1926, and see if by the use of that paper you can tell the court what the value of sheep was on the 1st of June, 1926?

By Mr. Wesner: Just a moment, if it please Your Honor, we renew all of our objections made heretofore as to the introduction of any testimony relative to the paper he is now offering the witness to refresh his memory from.

By the Court: Objection overruled.

Q. Are you able now to tell the court what the value of sheep was, on the 1st of June, 1926?

By Mr. Calvird: We also object to the testimony.

A. Yes, sir; from $12 to $17 a hundred.

Q. Do you know anything about the policy of this county, with reference to their lambs, if they were assessed, or not —sucking lambs?

A. I think not.

By Mr. Wesner: I object; unless he knows.

Q. Do you know about the policy with reference to the assessment of any sucking animals?

By Mr. Calvird: I object to all this testimony.

A. I will have to answer the same as I did.

[fol. 103] Q. Now you say you think not—why—upon what do you base that answer?

A. I don't think I ever heard an assesosr say as to just that question. By the way, our township assessor is here, and that can be learned from him when he is put on the stand; I suggest that you ask him that question.

Q. Yes, sir; all right; that's all.

(Witness excused.)

By Mr. Wesner: I further object to the testimony given in reference to values, because the value given by this witness was taken from the paper, and not the value as to Henry County, of animals or property in Henry County as of the 1st of June, 1926.

By Mr. Calvird: Object to all the testimony as immaterial and irrelevant; and not tending to prove or disprove any issues in this case.

Paper marked Exhibit H. A copy of the Kansas City Daily Drovers' Telegram, under date of June 1st, 1926; offered in evidence on the market of cattle, hogs and sheep.

By Mr. Wesner: I object to the introduction of that paper, by reason of the fact, first, it is immaterial and irrelevant; second, it is the market value for the sale of such live stock and animals in Kansas City, Missouri; and isn't the true value for the assessment of such property for the purposes of taxation in Henry County, Missouri, on June 1st, 1926, or at no date thereafter; for the further reason [fol. 104] that the values and amounts fixed by assessment, are fixed—at such time—are fixed by the officers charged with the duty under the law of fixing such values, and that they are conclusive, and that this evidence cannot at this time be heard to contradict such facts; and for the further reason, there is no showing—no testimony in this case, that the animals referred to in the paper in any instance are the same kind, character, quality or value as the animals assessed in Henry County, Missouri.

By Mr. Rucker: I think I will get that in. Mr. Witherspoon recalled.

Mr. M. B. Witherspoon, recalled by Mr. Rucker, testified further as follows:

Q. Are you acquainted generally with the character of the cattle and sheep and hogs that the farmers generally own in this county?

A. Yes, sir.

Q. I wish you would just look over the various classifications here in this market report, and tell the court whether or not the cattle and the hogs and the sheep in Henry County, shown in those classifications there, would have been of the kinds reported and represented in that paper?

By Mr. Calvird: I object to that; an indefinite answer—only calling for a conclusion.

By the Court: Objection overruled.

A. In what respect?

[fol. 105] Q. I notice here, under cattle, dress beef and cutter; did you have any of that character of cattle here?

A. Yes.

Q. Did you have yearlings?

A. Yes, sir.

Q. Did you have cows?
A. Yes.
Q. Did you have any cows and cutters?
A. Yes, sir.
Q. Have canners; steers and heifers?
A. Yes, sir.
Q. Heifers?
A. Yes, sir.
Q. Bulls?
A. Yes, sir.
Q. Stags?
A. Yes, sir.
Q. Dairy and stock calves, did you have that?
A. Yes.
Q. Any hogs; did you have mixed pig and butcher?
A. Yes, sir.
Q. Did you have good heavy pig and hogs?
A. Yes, sir.
Q. Light weights?
A. Yes, sir.
Q. Stock pigs?
A. Yes, sir.
Q. Short weight sows?
A. Yes, sir.
Q. Lambs—did you have native springers?
A. Yes, sir.
Q. Did you have native sheep?
A. Yes, sir.
Q. Some Colorado sheep?
A. Yes, sir.
Q. Not many?
A. Not many.
Q. Did you have Texas?
A. Not many.
Q. Did you have any Western here at all?
A. Very few.
[fol. 106] Q. But you have got native cattle?
A. Yes, sir.

By Mr. Wesner: Do you know whether or not these kind of animals that Mr. Rucker named over are the kind and quality of animals that this market reports on here in Kan-

sas City, were the same kind that was in Henry County, in June—on June 1st, 1926?

A. Mr. Wesner, I believe we raise and market about as good cattle and stock here——

Q. I know, but——

By Mr. Rucker: Let him answer the question.

By Mr. Wesner: That isn't responsive to the question.

By the Court: No; I don't think it is; repeat the question.

Q. I am asking you, Mr. Witherspoon as to whether or not you know that the kind of animals of the various kinds that Mr. Rucker has named over to you, were of the same kind and quality upon which the market value is quoted in this paper, were the same kind and quality of animals that you speak of as being in Henry County, Missouri, June 1st, 1926?

By the Court: Will that answer the description——

By Mr. Rucker: Did they come within the classification?

By the Court: Well, answer the question, if you can?

[fol. 107] A. I started to answer it in this way: that we raise and market in Henry County as good as there is in the state; in my belief——

Q. Then——

By Mr. Rucker: Let him finish.

A. In my belief, I think they would compare with what you see there that was sold on the market.

Q. Then you are merely basing your answer on an opinion and assumption that they are of like kind and character and value, is that correct?

A. Yes.

By Mr. Wesner: Now we submit to Your Honor, that isn't sufficient to be competent evidence in this case; and we ask that the testimony of the witness be stricken from the record.

By Mr. Rucker: I will get at it more specifically.

By the Court: All right.

Q. Have you ever had any experience much in buying and selling cattle?

A. No, sir.

Q. Well, do you know what those—do you know the various classifications of cattle?

A. Yes, sir.

Q. You loan money on cattle, don't you?

A. Yes, sir.

Q. In your bank?

A. Yes, sir.

Q. You know what dressed beef and store cattle mean, don't you?

A. Yes, sir.

[fol. 108] Q. Do you know whether on the 1st of June, 1926, there were dressed beef and store cattle in Henry County?

A. Yes, sir.

Q. Now do you know whether they had the classification known as yearling in Henry County, on the 1st of June, 1926?

A. Yes.

Q. You know of your own personal knowledge?

A. Yes.

Q. Did you have cows here?

A. Yes, sir.

Q. Did you have any cows and cutters?

A. Yes, sir.

Q. Now on the market a cow grades a little better than what they call a common cow and cutter, don't they?

A. Yes, sir.

Q. You know those various classifications, don't you?

A. Yes, sir.

Q. Generally speaking, from your own knowledge, can you say that there were cattle, hogs and sheep of the various classifications covered in this paper, in Henry County, on the 1st of June, 1926?

A. Yes, sir; if the gentlemen let me explain a little further—if you will allow me to explain it a little further: the bulk of the stock that is shipped from our vicinity is shipped by the Farmers' Shipping Association——

Q. Yes, sir?

A. And not often, well, in fact, I don't think he ever pays the farmers for the stock until he let me know, and have us [fol. 109] figure up to see if his totals are right——

By Mr. Wesner: I object to him giving testimony as to specific special instances, as to what may have happened in his community.

By the Court: Oh, well, they serve as pointers, as to what generally was true.

Q. Go ahead?

A. That is especially, more especially, as to hogs; I often hear him say: Well, I got the sheep, for twelve, ten cents, and the sheep total up among the hogs.

Q. Let me ask you if you know on what market do they base these prices down here, St. Louis or Kansas City?

A. Kansas City, altogether.

Q. If a man in shipping, for instance, hogs, if he has got heavy packing hogs, that is considered within that classification, isn't it?

A. Yes, sir.

Q. How much, under the Kansas City market does he figure for what he buys from the farmers down here?

A. He hardly ever buys himself, but I think I have heard him say that he pays about fifty to sixty cents a hundred, which would be about the—after the expenses.

Q. Fifty to sixty cents a hundred?

A. Yes, sir.

Q. So if hogs were selling above fifty that gave him a profit?

A. Yes, sir.

Q. What about stockers—both cattle and hogs, and sheep, everything; how does the local prices compare with the Kansas City prices, where a man is buying stock- [fol. 110] ers?

A. About in the same proportion as hogs.

Q. As a matter of fact, if you were buying of local men here, they figure on the expense, don't they, of getting them to Kansas City?

A. Yes, sir.

Q. And very often pay more than the quoted market prices?

A. Sometimes; yes.

Q. Because they are saving the expense of shipping? A. Yes, sir.

By Mr. Ruckner: All right; now I offer in evidence Exhibit H.

By Mr. Wesner: Objected to for the same reason.

By the Court: Objection overruled.

Said Exhibit H, is in words and figures as follows:

EXHIBIT "H"

Kansas City Daily Drovers Telegram

45th year—No. 72. Member of the Corn Belt Farm dailies. June 1, 1926—Tuesday evening. The full news service by United Press. $5.00 per year.

Cattle Trade Uneven

Best Light Steers and Yearlings Again Stronger

Heavy Killers and Most Cows Slow and Dull—Heifers and Mixed Yearlings Strong—Calves About Steady.

Receipts at noon today were estimated at $10,000 cattle, 2,000 calves, 10,000 hogs, 10,000 sheep and 543 cars. Offi- [fol. 111] cial receipts yesterday, 7,093 cattle, 974 calves, 7,840 hogs, 10,104 sheep, 46 horses and mules, 415 cars, including 673 cattle in the Texas division.

Receipts at Kansas City in 2 days of various weeks were:

	Cattle	Calves	Hogs	Sheep
This week	20,139	3,181	19,674	26,470
Last week	18,118	4,345	24,440	17,796
Year ago	17,823	3,357	15,587	21,884

Cattle—Beef Steers

Estimated receipts of cattle today were above the average for Tuesday at this season of the year. Arrivals here included some of the best quality shown in several days in all weights and grades. The demand was better than the

trade had expected and was rather broad for good light steers and all best yearlings. Trade on this class was fairly active with values stronger. Scattered sales looked 15c higher. All weighty killers were slow and late in attracting bids and values were no more than steady with the slow market yesterday on this class of offerings. Most steers sold around $9@9.75 with some choice 1,623 pounders at $9.90. Range cattle were dull and barely steady with the low time yesterday.

[fol. 112] Dressed Beef and Export

34	1624	9 90	40	1097	9 65
47	1098	9 60	10	1059	9 40
44	1074	9 50	40	1031	9 40
40	1106	9 40	36	1314	9 30
77	1022	9 35	20	1315	9 20
14	1094	9 35	3	1120	9 35
18	1044	9 25	18	1182	9 25
3	1096	9 25	26	1030	9 15
46	1084	9 25	38	1128	9 10
49	1072	9 15	40	1243	9 10
38	1236	9 10	11	1042	9 10
1	1170	9 10	21	1172	9 05
18	1272	9 10	48	1107	9 00
20	1036	9 00	31	1108	9 00
4	1080	9 00	17	1248	9 00
46	1017	9 00	6	1476	8 75
13	1136	9 00	21	1376	9 00
16	1450	9 00	60	1118	8 90
31	1176	8 75	20	1116	8 50
19	1187	8 75			
16	982	8 75			
15	1084	8 65	8	982	7 00
17	1068	8 25	10	1101	8 25
19	1050	8 25	11	1044	8 00

Yearlings

51	1084	9 75	4	610	9 50
17	661	9 35	17	553	9 35
6	880	9 35	2	545	9 35

[fol. 113]

41	810	9 25	30	718	9 25
42	931	9 25	30	873	9 25
31	881	9 25	2	735	9 25
18	864	9 25	15	784	9 15
35	653	9 25	19	895	9 00
7	834	9 10	27	883	9 10
31	942	9 10	33	767	9 00
16	755	9 00	37	711	9 00
4	640	9 00	25	873	8 85
22	822	9 00	4	846	8 50
25	901	8 90	9	872	8 75
10	822	8 75	3	876	8 75
15	690	8 75	4	622	8 75
21	859	8 75	20	981	8 65
22	668	8 60	12	544	8 50
41	934	8 50	1	940	8 50
4	962	8 50	9	697	8 50
9	952	8 50			
18	693	8 25	2	590	8 00
6	753	8 25	21	528	7 85
57	851	8 25			
3	850	8 00	4	735	8 00
15	844	8 00	1	970	7 50

Colorado Steers

44	1329	9 50	88	1291	9 30
43	940	9 00			
92	1287	8 70			

Oklahoma Yearlings

37	710	9 00

[fol. 114]

Texas Steers

25	1102	7 35	21	1088	7 25
120	981	7 25	16	1242	6 60
144	985	7 25			
47	1057	7 10	24	1033	6 33
24	913	6 50	28	806	6 25
15	1094	6 25			

Cows and Mixed

Receipts of cows and butchers were fairly liberal and the market was again a trifle uneven. The demand for cows was indifferent and sales were slow with values steady to weak. Best heifers and mixed yearlings, however, were again easily moved and sales were strong 15c higher for the more desirable weights. Most cows sold around $4.50 @7 and the best heifers ranged around $8@9.50. Some steers and heifers mixed went to the scales early at $9.75. Butcher and bologna bulls were again slow and mean to move with values about steady with the previous day's average.

Cows

1	990	8 00	1	1420	7 50
1	1230	7 50	1	1050	7 00
1	1310	7 10	1	1140	7 00
1	1120	7 00	1	1160	7 00
1	1170	7 00	1	1120	6 75
1	1010	6 75	1	880	6 75

[fol. 115]

2	1150	6 75	1	880	6 25
4	1150	6 65	5	1304	6 50
1	1130	6 50	1	1050	6 50
1	1050	6 40	1	1290	6 25
12	1005	6 25	1	1370	6 25
1	1120	6 25	1	1230	6 25
1	930	6 25	1	820	6 25
1	840	6 25	2	1065	6 25
1	880	6 25	2	1145	6 00
1	1340	6 40	10	921	6 00
1	1000	6 00	1	1070	6 00
1	1000	6 00	1	1090	6 00
3	1206	6 00	1	1130	6 00
10	855	6 00	8	938	6 00
1	1090	6 00	1	1160	5 85
1	1170	6 00	1	920	5 50
1	930	5 85	1	1110	5 75
2	1120	5 75	2	1080	5 75
1	890	5 75	1	1130	5 75

1	1410	5 75	2	880	5 50
1	1140	5 75	1	930	5 50
1	1210	5 50	11	953	5 50
2	790	5 50	1	1350	5 50
1	930	5 50	1	1060	5 50
1	750	5 50	1	900	5 25
1	920	5 50	12	975	5 35
1	950	5 35	3	1040	5 25
1	850	5 25	7	1024	5 25
1	670	5 25	1	900	5 25
1	1080	5 25	1	860	5 25

[fol. 116]

2	935	5 25	1	800	5 25
1	830	5 25	3	1000	5 25
1	1020	5 25		z	
1	980	5 00	2	1020	5 00
2	805	5 00	1	980	5 00
1	950	5 00	3	890	5 00
1	870	5 00	1	1170	5 00
1	960	5 00	1	1100	5 00
1	870	5 00	1	960	4 75
6	922	5 00	1	950	4 50
2	1025	4 75	1	940	4 75
1	720	4 75	1	790	4 75
1	640	4 75			

Common Cows and Cutters

1	1060	4 50	1	900	4 50
1	1050	4 50	1	870	4 50
1	680	4 50	1	1260	4 50
1	940	4 50			
3	670	4 25	1	870	4 25
1	1000	3 75	1	600	3 75
1	1110	4 25	1	860	4 25
2	825	4 25	1	1010	4 25
5	1008	4 25	1	820	4 25
1	980	4 25	1	810	4 25
4	1050	4 25	13	812	4 25
4	1015	4 00	6	910	4 00
2	890	4 00	10	834	3 75
1	860	3 75	1	780	3 75
3	740	3 75	2	885	3 75

[fol. 117]

3	960	3 75	1	880	3 75
1	920	3 75	1	910	3 75
1	640	3 75	4	875	3 75
1	750	3 75	3	663	3 60
1	720	3 75	1	920	3 75
2	760	3 75	1	1030	3 75
2	810	3 75	2	765	3 75
8	860	3 65	4	822	3 65
1	640	3 50			

Mixed Steers and Heifers

25	761	9 75	15	546	9 25
32	760	9 50	17	784	9 25
35	800	9 25	19	764	9 00
24	760	9 00	27	777	9 00
18	810	9 00			
14	854	8 90	23	816	8 85
10	661	8 85	5	722	8 75
10	600	8 75	23	703	8 75
3	666	8 75	14	752	8 65
17	735	8 75	13	681	8 40
8	666	8 65	14	715	8 50
10	688	8 50	11	742	8 25
12	690	8 25	7	719	8 00

Heifers

11	696	9 50	44	616	9 50
2	775	9 50	1	610	9 25
21	571	9 30	40	685	9 30
4	867	9 25	18	653	9 00
10	710	9 15	15	713	9 00

[fol. 118]

3	883	9 10	1	510	9 00
6	910	9 00	21	764	8 75
2	610	9 00	1	700	8 75
15	781	8 75	3	833	8 65
33	700	8 75	1	550	8 25
29	674	8 65	28	740	8 10
7	1028	8 35	1	650	8 00

20	785	8 25	1	950	7 75
1	750	8 00	20	650	8 00
1	520	8 00	3	913	7 50
4	537	8 00	3	976	7 75
4	642	7 50	1	730	7 50
2	900	7 50	2	615	7 50
1	690	7 50	3	600	7 50
1	890	7 50	7	807	7 35
5	631	7 25	1	770	7 25
10	718	7 25	49	821	7 25
2	775	7 00	1	1230	7 00
1	600	7 00	5	710	7 00
2	875	7 00	1	630	6 50
5	550	6 50	20	664	6 25
1	750	6 50	14	675	6 25
4	580	6 50	2	560	6 00
2	760	6 00	1	800	6 00
1	590	5 75	1	600	5 75
1	660	5 50	1	800	5 50
1	800	5 50	1	700	5 25
1	700	5 25	1	980	5 00
1	740	5 00	1	680	5 00
1	670	5 00	5	502	5 00
4	675	5 00	2	740	4 50

[fol. 119]

Bulls

1	1560	5 00	1	2050	5 75
1	1690	5 50	1	1250	4 75
1	1510	5 25	1	940	7 00
1	1300	5 35	1	1370	5 60
1	900	7 00	1	1100	5 25
1	1180	5 00	1	770	5 00
4	1272	5 00	2	1025	4 50
1	1330	5 00			
1	1830	5 50			
1	1510	5 50			

Stags

1	1220	7 00

Oklahoma Cows

1	1150	6 50	1	1120	6 00
1	950	5 25	1	860	4 50
1	1010	4 50	1	780	4 50
1	996	4 00	2	790	3 65

Oklahoma Bulls

1.....	1540	5 25	1.....	600	4 00
1.....	630	5 50			

Texas Cows

3.....	996	5 50	4.....	895	5 00
26.....	744	4 35	19.....	795	3 85

Veal and Stock Calves

There was an estimate for 2,000 head of calves in the yards today. The demand for veals and the better kinds [fol. 120] of killers was fairly good and, where stuff suited, trade was free with prices strong to 50c higher. Others were late in attracting bids and sorting was heavier than that of yesterday. Heavy and medium-weight killers were steady to weak. Most veals sold around $10@11.50 for the better kinds with odd head at $12. The great bulk of all calves to the packers sold around $6.50@$11. Good weighty well bred stock calves were scarce and firm. Others were dull and prices were uneven.

Calves Bought by Packers

4.....	142	11 00	2.....	170	10 50
4.....	125	9 00	1.....	200	10 50
5.....	148	11 00	1.....	140	11 50
2.....	310	8 00	5.....	174	11 50
4.....	385	5 50	1.....	170	11 50
2.....	195	11 00	3.....	75	5 50
2.....	130	6 00	1.....	120	8 50
1.....	160	6 00	1.....	180	8 50
3.....	143	11 00	4.....	152	8 50
1.....	140	11 00	1.....	80	6 00
1.....	120	11 00	2.....	135	8 50
3.....	153	11 00	2.....	180	8 50
1.....	140	11 00	1.....	390	7 00
1.....	150	10 50	2.....	455	8 75
1.....	100	10 50	1.....	420	8 50
1.....	180	11 00	2.....	130	5 00
2.....	205	10 50	1.....	130	8 50

[fol. 121]

14	151	11 00	1	100	6 00
1	110	6 00	3	143	10 00
1	150	10 00	1	120	8 00
8	192	11 00	1	160	8 00
1	110	6 00	2	135	11 00
1	190	10 00	1	150	11 00
2	105	8 00	1	140	10 00
1	120	11 00	1	140	11 00
5	130	7 00	1	190	11 00
2	255	11 00	5	312	8 00
13	175	11 00	1	100	8 00
13	212	11 00	1	260	11 00
1	270	10 00	1	120	6 00
2	165	11 00	1	130	7 00
1	340	9 00	1	180	11 00
3	173	11 00	4	182	11 00
2	170	11 00	1	200	8 00
1	140	11 00	1	300	7 00
1	150	12 00	1	190	7 00
1	190	9 00	13	175	11 00
1	140	11 00	3	160	11 00
2	135	11 00	1	135	11 00
1	170	11 00	1	180	11 00
1	230	11 00	2	1560	8 50
1	140	8 50	1	240	6 00
1	220	5 50	1	120	7 00
1	250	7 00	1	120	5 00
3	123	5 00	2	135	7 00
1	180	7 00	1	120	7 00
1	110	10 00	2	225	7 00

[fol. 122]

1	180	5 00	5	368	8 50
1	250	8 50	1	120	7 00
1	220	11 00	1	210	11 00
1	120	8 00	5	240	5 00
5	770	6 50	11	146	7 00
14	145	10 00	1	180	10 00
1	130	8 00	2	105	8 00
1	160	11 00	1	140	8 00
1	100	8 00	2	315	7 00
1	170	4 00	1	170	11 00

1	240	11 50	1	150	11 00
2	255	9 50	1	210	11 00
3	233	10 00	1	210	6 00
2	280	7 00	1	100	6 00
25	180	11 00	4	157	9 00
3	170	11 00	6	98	6 00
4	227	10 50	2	150	11 00
1	360	6 00	2	305	9 00
3	233	8 00	18	159	11 00
12	114	7 00	2	364	4 00
4	110	11 00	15	196	11 00
1	330	5 00			
2	275	8 25			

Mixed and Stock Calves

1	240	7 25	1	430	4 50
4	367	5 50	1	340	6 00
1	430	5 00	1	440	8 75
1	470	6 00	1	460	5 50
1	410	5 00	4	422	7 00

[fol. 123]

2	440	4 50	3	453	5 00
1	460	6 50	2	420	6 00
4	457	6 25	7	437	6 25
14	447	7 75	1	470	7 00
1	470	7 25	3	406	4 00
2	250	6 00	1	480	7 50
1	460	4 50			

Oklahoma Calves

1	300	6 75	5	334	6 75
1	300	6 00	1	410	6 50
2	330	6 50	1	110	5 00
5	180	5 00	2	205	5 00
1	200	9 00	2	210	11 00
2	235	11 00	2	490	7 00
1	358	7 00	3	323	5 00
2	435	5 00			

Texas Calves

26	446	8 75	3	446	7 00
2	330	5 00	4	187	10 00
17	318	7 50	2	255	4 50

Stockers and Feeders

The run of stockers and feeders was rather limited and the per cent of real promising animals was slim. There

Continued on Third Page

Hogs are Mostly Steady

[fol. 124] Market Opened Slowly and Closed Fairly Active

Extreme Top, $14.15 on Light Lights—Shippers Paid $14 —Packer Top, $14—Heavies, $13.80—Stock Pigs Steady

Résumé of Hog Sale

Bulk of sales	$13.75@14.00
Stock pigs, 125 lbs. under	14.50@15.35
Light lights, 125 @ 170 lbs.	13.75@14.15
Lightweights, 170 @ 200 lbs.	13.75@14.00
Butchers, 200 @ 250 lbs.	13.75@14.00
Heavies, 250 lbs. and up	13.25@13.80
Stags	10.75@11.50
Sows	12.00@12.50

Receipts of hogs today were estimated at 10,000 as compared with 10,000 a week ago and 8,500 a year ago. In the same periods the West had 57,500, 61,500, and 52,500, respectively. General quality of the local supply was fairly good.

Early trading in hogs today was very slow and the tone was bearish. Receipts here and in the West were lighter than last Tuesday but the demand was weak regardless of this fact. Shippers and traders finally took a few lights and butchers, paying as high as $14 for their purchases. Salesmen were asking fully steady prices and early sales [fol. 125] were about steady. Packers waited and showed very little interest in the early changed market. They claimed lower orders and waited until late before entering

the market. The bulk of hogs finally sold to packers at steady prices, comparing with yesterday's average. Lights at $14 and butchers at $13.95 were best sales. Choice heavies were quoted at $13.80 and under. Plain and common mixed hogs were slow and weak with some sales slightly lower. Light lights were steady. Stock pigs were unchanged.

The top $14.15 was unchanged and the bulk of all good hogs at $13.75@14 was steady. Best lights at $14.15 were the same. Pigs were steady at $14.50@15.35.

Mixed Packing and Butcher Hogs

Choice butcherweights sold up to $14 to traders and shippers paid $14 for a few. The market was slow and draggy and prices were about steady with yesterday's average. Packers traded late at $13.95 and under. Plain mixed hogs were barely steady.

No.	Av.	Pr.	No.	Av.	Pr.
52	223	14.00	76	220	14.00
74	214	14.00	66	204	14.00
72	207	13.95	78	209	13.95
77	204	13.95	69	201	13.95
61	200	13.95	78	224	13.95
50	213	13.95	64	205	13.95
73	212	13.95	32	200	13.95
[fol. 126]					
71	204	13.95	51	206	13.95
61	202	13.95	72	212	13.95
77	205	13.95	62	208	13.95
58	205	13.95	71	215	13.95
61	202	13.95	56	206	13.95
62	215	13.95	71	222	13.95
73	228	13.95	69	226	13.95
57	216	13.90	15	242	13.90
13	219	13.90	40	222	13.90
41	200	13.90	59	215	13.90
20	221	13.90	78	201	13.90
68	219	13.90	20	215	13.90
70	245	13.90	40	232	13.90
59	225	13.90	69	210	13.90
61	222	13.90	65	236	13.90

No.	Av.	Pr.	No.	Av.	Pr.
62	226	13.90	67	218	13.90
71	214	13.90	59	222	13.90
66	235	13.90	72	233	13.90
31	219	13.90	33	223	13.90
32	215	13.90	33	228	13.90
35	224	13.90	12	208	13.85
61	225	13.85	59	232	13.85
51	230	13.85	61	237	13.85
63	223	13.85	65	222	13.85
5	210	13.85	6	231	13.85
68	215	13.85	36	221	13.85
73	238	13.85	37	235	13.85
78	237	13.85	62	226	13.85
53	249	13.85	68	200	13.85
54	240	13.85	69	215	13.85

[fol. 127]

38	230	13.85	79	221	13.85
38	229	13.80	14	234	13.80
17	222	13.80	69	244	13.80
75	239	13.80	43	243	13.80
70	240	13.80	31	226	13.80
59	235	13.80	72	236	13.80
41	230	13.80	30	243	18.80
11	239	13.80	42	236	13.80
44	220	13.80	12	247	13.75
56	240	13.75	41	240	13.75
61	245	13.75	63	231	13.70

Good Heavy Packing Hogs

Early trading in heavy hogs was slow but later a fair clearance was made at steady to weak prices. Packers paid $13.80 for choice heavies. A few early sales to traders were quoted at $13.80. Throwouts were slow and lower.

No.	Av.	Pr.	No.	Av.	Pr.
64	252	13.80	20	254	13.80
67	261	13.75	64	256	13.75
66	255	13.70	59	260	13.70
64	273	13.70	49	280	13.65
62	270	13.65	60	275	13.65
45	283	13.65	31	275	13.60

No.	Av.	Pr.	No.	Av.	Pr.
36	272	13.60	65	293	13.60
45	282	13.60	11	285	13.60
64	305	13.50	65	295	13.50
6	300	13.50	14	312	13.50
20	313	13.50	54	291	13.50

[fol. 128]

55	302	13.50	8	327	13.40
52	360	13.15	28	361	13.10

Light Weights

Shippers took lightweights up to $14 on the early market but most later sales were made at $13.90 and under. Packers bought a few at $14. The market was generally steady with yesterday's average.

No.	Av.	Pr.	No.	Av.	Pr.
17	177	14.00	44	198	14.00
78	181	14.00	60	195	14.00
69	196	14.00	17	188	14.00
25	176	14.00	21	175	14.00
16	176	14.00	48	194	14.00
64	193	14.00	20	196	14.00
65	196	14.00	15	170	14.00
73	192	13.95	69	183	13.95
82	195	13.95	80	197	13.95
61	193	13.95	61	196	13.95
85	187	13.95	58	193	13.95
74	193	13.95	47	194	13.90
71	193	13.95	62	197	13.95
40	177	13.95	69	194	13.95
20	189	13.90	24	194	13.90
5	198	13.90	9	185	13.90
17	188	13.90	8	193	13.90
72	199	13.90			

Light Lights

Offerings of this class unchanged and the trade was fairly active. Best kinds sold at $14.15.

No.	Av.	Pr.	No.	Av.	Pr.
21	154	14.15	16	147	14.15
21	150	14.10	21	156	14.10

[fol. 129]

9	155	14.00	8	152	14.00
3	156	14.00	10	150	14.00
9	141	14.00	11	167	14.00
12	158	14.00			

Stock Pigs

The pig market was fairly active and prices ruled steady. Choice light pigs sold at $15.35. Plain mixed pigs were weak.

No.	Av.	Pr.	No.	Av.	Pr.
39	103	15.35	20	62	15.25
11	109	15.25	14	114	15.25
45	106	15.25	7	119	15.10
31	106	15.00	16	159	14.75
7	130	14.75	18	133	14.50
16	142	14.50	11	122	14.50
18	136	14.50	9	157	14.40
7	150	14.40	20	145	14.40
4	160	14.40	26	140	14.35
10	154	14.25	9	161	14.25

Throwout Sows

No.	Av.	Pr.	No.	Av.	Pr.
2	370	12.50	4	400	12.50
4	375	12.40	3	423	12.40
2	410	12.40	2	355	12.35
2	380	12.40	5	408	12.40
2	365	12.25	4	412	12.25
7	430	12.25	3	380	12.25

[fol. 130]

9	375	12.25	6	431	12.25
10	485	12.25			

Stags

No.	Av.	Pr.	No.	Av.	Pr.
1.	70.490	11.50	1.	70.460	11.50
1.	70.410	11.50	1.	70.520	11.35
1.	70.690	11.00	1.	70.680	11.00

Monday's Average Hog Prices

The average hog costs yesterday at four western markets were as follows: Kansas City $13.69, Omaha $13.29, Chicago $13.72, and St. Louis $13.94.

Top Prices Today and Year Ago

Bear in mind that prices shown in this table are the extreme tops for the highest quality. In grain sales cars with special billing are not considered in this tabulation. See detailed report for other prices.

Cattle—Irregular	$9.90	$11.25
Hogs—Steady	14.15	12.00
Sheep—25c lower	8.25	10.50
Lambs—Steady to 25c lowes	17.00	15.25
Wheat—		
Dark hard—2c up to 1c off	1.48	1.77
Hard—2c up to 1c off	1.48	1.76¼
Red—1c higher	1.45	1.70
Corn—½ @ 1c lower	.71	1.09½
[fol. 131] Oats—Unchanged	.40	.48
Alfalfa—$1.50 @ 250 lower	17.50	18.50
Timothy—Steady	23.00	11.50
Prairie—Steady	17.50	10.50
Eggs—F. o. b. at K. C.	.27	.28
Butterfat—F. o. b. at Kansas City	.34	.38

Lambs are Down Again

Prices Today Steady to 25c. Below Yesterday

Choice Native Springers, $17—Colorados, $16,85—Texas Wethers, $8.25—Shorn Ewes, $5.65—Feeders Scarce

Arrivals of sheep and lambs according to the estimate numbered 10,000. The noon count was 10,000. A week ago 7,000 arrived and 8,000 a year ago. In the same periods the West had 35,500, 19,000, and 29,000, respectively. Generally quality of the local supply was fairly good.

The market for fat sheep was slow and prices were mostly 25c lower. The supply was limited. Choice two-year-old Texas wethers sold at $8.25. A few ewes sold up to $6.25

with most sales at $6 and under. Yearlings were very scarce. Feeding and breeding stock was scarce and steady.

[fol. 132]

Native Sheep

7 weth.....	148	7.50	4 ewes.....	187	5.00

Texas Sheep

492 sh. w...	102	8.25	482 sh. w. ..	101	8.25
36 sh. w. ..	88	8.00			

Colorado Sheep

598 sh. e....	115	5.00			

Lambs

Trading in fat lambs was slow and prices ruled steady to 25c lower. Native springers sold up to $17 and the bulk went at $16.50@16.75. Good Colorado springers were marketed at $16.85. Several loads of California springers sold at $16.75 with a moderate sort. Culls and common kinds were unevenly lower. Shorn lambs were scarce. Feeders were quoted about steady.

Native Springers

No.	Av.	Pr.	No.	Av.	Pr.
110.....	73	17.00	10 culls....	61	12.50
43.....	63	16.75	11.....	70	16.75
7.....	78	16.75	142.....	70	16.75
14.....	75	16.75	135.....	66	16.75
31.....	64	16.75	69.....	69	16.60
22.....	62	16.50	11.....	60	16.50
13.....	69	16.50	10.....	71	16.50
41.....	62	16.50	5 culls....	50	12 00
112.....	59	16.50	20 culls....	56	12.00
19.....	72	16.25	58.....	65	16.25
15.....	56	16.25			

[fol. 133]

Texas Springers

No.	Av.	Pr.	No.	Av.	Pr.
137.....	58	16.00	153.....	70	12.00

Arizona Springers

637.....	68	16.50	634.....	69	16.50

Colorado Springers

177.....	68	16.85	20 culls.....	57	12.50
250.....	59	16.25			

California Springers

1100.....	75	16.75

Other Live Stock Markets

(U. S. Bureau Agricultural Economics)

Chicago, June 1.—Cattle, 11,000; calves, 4,000; fat steers and yearlings uneven, steady to strong with Monday's close, spots 10c to 15c higher on better grades heavies and medium weight offerings; $10.65 paid for 1,519-pound Nebraska's medium weights $10.40; best yearlings $10; she stock steady to strong; veals largely 50c higher, $12 to $13.25 to packers; upward to $14 to shippers. Hogs, 18,000, fairly active, strong to mostly 10c higher than Monday's average; 240 to 325 lbs butchers $13.60 to $14; desirable 210 lbs down $14.05 to $14.30; top $14.30; bulk sales $13.60 to $14. Sheep 15,000; fat lambs opening steady to 25c lower; desirable yearlings held for fully steady prices, tendency lower in in-between grades lambs and yearlings; three doubles choice 72-pound Idahos at $18.50 and $18.65; [fol. 134] short top of eight cars of California $16.50; asking upward to $18.50 for best natives; best yearling wethers held around $16.75; heavy fat ewes weak to unevenly lower; desirable kinds steady; few choice ewes $7.50; heavies mostly $5 to $6.

East St. Louis, June 1.—Cattle, 5,000; calves, 3.500; steers steady; natives $9.60; bidding lower on beef cows; other classes steady. Hogs, 15,500; active, steady to strong; top $14.40; bulk $14@14.40. Sheep, 3,000; early sales steady; native lambs $17.50; holding best Tennessee lambs at $17.75@17.85; fat ewes, $6.50.

Omaha, June 1.—Cattle, 10,000; calves, 500; better grades fed steers and yearlings uneven, steady to strong;

mediumweight steers, $10; she stock and bulls mostly steady. Hogs, 10,000; mostly 10@15c higher; top $13.85; bulk $13.25@13.80. Sheep, 5,000; lambs generally steady; Idahos, $17.75; best natives, $17.35; yearlings and sheep weak.

St. Joseph, Mo., June 1.—Cattle, 3,000; desirable classes steers and yearlings fully steady; others slow; handyweight steers $9.50; cows and heifers unchanged. Hogs, 4,500; steady to 10c higher; top $14; bulk 200 to 250 lbs butchers $13.50 to $13.95. Sheep, 1,500; steady to weak; native spring lambs $17.25; no Californias offered.

Wichita, June 1.—Cattle, 400; steady. Hogs, 2,400; steady; prospective top $13.80. Sheep, 200; lambs 25c lower; $15.50.

[fol. 135] Oklahoma City, June 1.—Cattle 1,000; slow and weak. Hogs, 1,600; dull; prospects shade lower; top $14.

Government Estimates for Wednesday

	Cattle	Hogs	Sheep
Kansas City	8,000	9,000	7,000
Chicago	11,000	16,000	7,000

General Notes

"Leave it to Lyle."

Carlisle Com. Co., hay, grain, feed.

"Hartford" Live Stock Transit Insurance. Stock Yards, Kansas City.

Double deck load native pigs. Even in size. Average 70 lbs. Vaccinated, 15c. Wire G. W. Risner, Mammoth Spring, Arkansas.

Tarkio is now and has been the feed for every need for over 17 years. Made in Kansas City only. Tarkio Molasses Feed Co., 561-67 Live Stock Exch. Bldg., Kansas City, Mo.

Mr. W. H. Irwin, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of plaintiff, as follows:

Q. State your name?

A. W. H. Irwin.

Q. Where do you reside, Mr. Irwin?

A. Urich, Mo.

[fol. 136] Q. What is your occupation?

A. Cashier of the Bank of Urich.

Q. How long have you been engaged in that occupation?

A. As cashier?

Q. Yes, sir?

A. Nearly twenty-six years.

Q. How long have you been engaged in the banking business?

A. Thirty-one years.

Q. Did you make the return for your bank required under the statute, showing the face value of the stock—the face value of your stock, as shown as of June 1st, 1926?

A. I did.

Q. Were you familiar with the statutory requirements?

A. Yes, sir.

Q. In making the return did you show the value of all real estate represented by the shares of stock, together with the reserve funds, undivided profit, premiums, earnings and all other values belonging to the bank?

A. I did.

Q. Did you show the true face value of your stock?

A. Yes, sir.

Q. Of all surplus and earnings?

A. The statutory——

Q. The statutory value—the book value?

A. Yes, sir.

Q. Can you tell—do you know what proportion the assessed valuation of your stock bore to your return value?

A. A hundred per cent.

Q. Are you familiar with the values of personal property in Henry County?

A. Comparatively—in our section only.

[fol. 137] Q. Do you know what the value of sheep, for instance, were on the 1st day of June, 1926—in your section?

By Mr. Wesner: Please the court, we object to his answering that question, because he hasn't shown himself qualified to do so—limited—his knowledge, what he claims to have—to a particular section of the country.

By Mr. Calvird: And we renew all the other objections heretofore made.

By the Court: Objection overruled.

Q. Do you know?

A. Sir?

Q. Do you know what the value of sheep were in your section?

A. Yes, sir.

Q. What was it, June 1st, 1926?

A. I can't give the exact date—that approximate date.

Q. Not exactly that date?

A. I personally loaned a man to buy sheep at $16.50 a head.

Q. Do you know what the assessed value of sheep is down there?

A. No, sir.

Q. Haven't examined the record?

A. I haven't examined the record.

Q. Do you know what the value of cattle was, on the 1st day of June, 1926?

A. Not only what I was interested in myself.

Q. Well, that just the average run of cattle down there?

A. The average run of cattle.

Q. All right, what were they worth?

A. They run from fifty to seventy dollars.

Q. Fifty to seventy dollars?

A. Milch cows.

[fol. 138] Q. Milch cows, from fifty to seventy a head; you aren't familiar with stock cattle?

A. Only from loan value; I didn't have any.

Q. You didn't have any?

A. No.

Q. What about hogs, are you familiar with the value of hogs, the 1st day of June, 1926?

A. Yes, sir.

Q. What were they worth?

A. The market has been quoted here—was all right.

Q. They are all right—that was the price of them, was it?

A. Yes, sir.

Q. Now do you know what the plan of assessment in this county is, with reference to whether or not suckling animals are assessed?

A. I don't.

Q. You don't know, one way or the other?

A. No, sir.

Q. Do you know about the plan of assessing household goods?

A. I don't know what the plan is.

Q. Well, do you know how it is done; with reference to values?

A. Judging from the lists I have viewed, they just have them fix the amount yourself as to household goods, largely.

Q. I didn't understand the answer?

A. Judging from the lists I have seen, rather think household goods we just put down at a certain amount.

Q. Well, how much?

By Mr. Wesner: I object; the list would show for themselves.

[fol. 139] Q. Well, full value, or not?

By Mr. Wesner: Object; leading and suggestive.

By the Court: Objection overruled.

A. Why, no, they are not.

Q. Well, at what part of the value—what per cent of the value?

A. They will vary, just like other assessments; some are assessed from twenty to twenty-five per cent; some possibly sixty per cent; some possibly seventy per cent; to take it by the average, it is assessed about 33⅓%, in that section of the community there.

(Witness excused.)

Mr. J. H. Harvey, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of plaintiff, as follows:

Q. State your name?

A. J. H. Harvey.

Q. Where do you live?

A. Urich, Mo.

Q. What is your occupation?

A. Banker.

Q. How long have you been engaged in the banking business?

A. Fifteen years.

Q. Did you make return for your bank, purporting to show the value of the stock, or the book value of the stock, on the 1st of June, 1926?

A. I did.

Q. Did that return include the value of all real estate, undivided profits, premiums, earnings, and all other values included—all other values belonging to the bank?

A. It did.

[fol. 140] Q. Is that the true book value of the stock?

A. Yes, sir.

Q. What per cent of the book value was the assessed value?

A. A hundred per cent.

(Witness excused.)

Mr. JOHN A. GROB, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of plaintiff, as follows:

Q. State your name?

A. John A. Grob.

Q. Where do you reside, Mr. Grob?

A. Deepwater, Mo.

Q. What is your occupation?

A. Cashier of the Farmers' Bank.

Q. Did you make a return for your bank, showing the book value of your stock, as of the 1st of June, 1926?

A. Yes, sir.

Q. Are you acquainted with the statutory duties in making that return?

A. I think so.

Q. Did your return show the value of all real estate represented by the shares of stock, together with the reserve funds, undivided profits, premiums, earnings and other values belonging to the bank?

A. Yes, sir.

Q. Was that the true book value of the stock of the bank?

A. Yes, sir.

Q. What percentage of the true book value was represented or reflected in the assessed valuation?

A. None.

[fol. 141] Q. None—didn't they assess you at all?

A. Oh, the assessment—the same statement I made, of the book value.

Q. Well, I say; at what per cent did they assess you?

A. The total amount I give in.

Q. A hundred per cent?

A. Yes, sir.

Q. That's all.

By the Witness: We went and bought—when we organized, we organized with ten thousand capital stock, and we bought our real estate and built a building, it cost $3,400.00; and we are paying the capital stock, and on undivided profit, and on $34.00 and $50.00 real estate right along all the time.

That's all.

(Witness excused.)

Mr. E. N. McDowell, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of plaintiff, as follows:

Q. State your name?

A. E. N. McDowell.

Q. Where do you reside?

A. Clinton, Mo.

Q. What is your occupation?

A. I am in the life insurance business.

Q. Are you interested in any bank now?

A. No, sir.

Q. What was your occupation the 1st of June, 1926?

A. Vice president and executive officer of the Peoples' National Bank of Clinton.

Q. Did you make a return for that bank?

A. Yes, sir.

[fol. 142] Q. Purporting to show the book value of the bank stock, as of the 1st, of June, 1926?

A. Yes, sir.

Q. Did the return you made truly reflect the book value?

A. No, sir.

Q. In what part was it erroneous?

A. There was an error made in footing the return by which the surplus fund was omitted; later it was discovered, and the report returned to me, and the additional amount paid.

Q. That was corrected, then?

A. Corrected.

Q. Did you show the value of all real estate represented by the shares of stock, together with the reserve fnud, undivided profits, premiums, earnings and other values belonging to the bank?

A. Yes, sir.

Q. That is, with the correction that you made?

A. With the correction.

Q. What proportion of your value was reflected by the assessed valuation?

A. A hundred per cent.

Q. Are you acquainted with the values of personal property in Henry County?

A. Yes, sir.

Q. Do you know what sheep were worth on the 1st of June, 1926?

A. Well, only by refreshing my memory; I usually kept pretty close tab on the market.

Q. Have you refreshed your memory?

A. I haven't—except just from the testimony given.

Q. Do you know what the Kansas Daily Drovers' Telegram is?

A. Yes, sir.

[fol. 143] Q. Is that an authentic market paper?

A. I regard it so.

Q. Can you fresh your memory if you had the issue of June 1st, 1926, as to the markets?

A. Yes, sir.

Q. I hand you now a copy of that paper, which has been introduced in evidence, and ask you if, with the aid of that paper, you will be able to tell the court what the value of sheep would be, in Henry County?

A. Yes, sir; approximately.

Q. All right—as of June 1st, 1926?

A. (Witness refers to issue of Drovers' Daily Telegram, of June 1st, Exhibit H.)

A. Yes, sir.

Q. Well, what?

A. What classes?

Q. Well, lambs?

A. Lambs, ranging from $16. That is, the usual classification of lambs—from $16 to $18.

Q. When you speak of the usual classifications, do you mean the kind that are here in Henry County?

A. Yes, sir, the average run of lambs here and on the Kansas City market, from Henry County.

Q. All right; what about wethers?

A. Wethers, around $8.25 on the Kansas City market.

Q. What were native springers worth?

A. Native springers run in value—for—$12.50 for culls, to as high as seventeen dollars.

Q. You mean $17 a hundred—all the quotations are on the hundred?

A. A hundred; yes, sir.

[fol. 144] Q. Is that the kind of sheep that you generally have around in Henry County?

A. Yes, sir. I raised a number of—a number of sheep to go to the Kansas City market, when they were marketed.

Q. Can you tell us what the value of hogs was at that time?

A. Yes, sir; I think—the bulk of the sales run from thirteen seventy-five to fourteen dollars a hundred.

Q. You say the bulk of the sales: I am asking what the value of the hog is?

A. Well, the value of a hog, of course, depends on the class of the hog; the bulk of the sales is considered the average fat hog that would go on the market for that particular date.

Q. Good and bad?

A. Yes, sir.

Q. Do you know the character of hogs that are ordinarily and usually shipped out of Henry County?

A. The average of the market?

Q. An average with the market?

A. Yes, sir.

Q. You mean the Kansas City market?

A. Yes, sir.

Q. You have had occasion to inspect hogs in this county, did you, while you were in the bank?

A. Yes, sir.

Q. And cattle?

A. Yes, sir.

Q. And sheep?

A. Yes, sir.

Q. Did you make loans on them?

A. Yes, sir.

Q. Just state to the court whether or not the cattle and the hogs and the sheep in Henry County were the kind [fol. 145] and character of the cattle and the hogs and the sheep that are mentioned there in the market report you have?

A. They are; because that is the place they are shipped, when they go up to the market.

Q. Do you know what the assessed valuation of sheep in Henry County was?

A. I don't; except what the records show.

Q. You know nothing about how they got the assessed valuation?

A. I hardly know how they were quoted on the assessment sheet; that is, I haven't personally investigated the assessment sheets, if that's what you mean.

Q. Do you or not know about the policy of assessing or not assessing suckling animals?

A. Well, my knowledge that way is limited; I heard one assessor say that the sucking animals weren't assessed.

Q. Now, of course, there are a larger number of sucking animals in Henry County, are there not?

A. Yes, sir.

Q. On the first day of June?

A. Yes, sir.

Q. And, with reference to sheep, on the 1st day of June, wouldn't there be?

A. Yes, sir.

Q. Sucking lambs—and hogs, too?

A. Yes, sir; a great many of them.

Q. And colts and calves—the spring increase would probably be all sucklings of June 1st?

A. Yes, sir; should be.

[fol. 146] Q. Now do you know anything about the assessment of household goods in this county—in this township?

A. Well, in a limited way.

Q. Well, is it, or not, assessed at its full value?

A. No, sir; it isn't.

Q. At what per cent of its full value is it assessed?

A. Well, largely a nominal value.

Q. Well, at what per cent, would you say, of its true value?

A. Well, perhaps, not to exceed thirty-five, to fifty per cent.

Q. Do you know about farm machinery and implements?

A. Well, I know something of them.

Q. Do you know whether or not they are assessed at full value, or not?

A. I don't know how they are assessed; not having had any within my personal experience, and not having investigated the returns that are made.

Q. All right; would you be able to say whether $6,695 represented the full value of all the farm machinery in Clinton Township, or not, on June 1st, 1926?

A. Well, I would regard that as a pretty low estimate.

Q. Well, from your knowledge of farm machinery in this township, what proportion of the true value would you say that represented?

A. Well, it would be only an opinion; I would hate to hazard a guess on it; but I would consider it extremely low.

Q. Would you say that it was or wasn't seventy-five per cent?

A. Well, I would consider it less than that.

[fol. 147] Q. Less than that—that's all.

Cross-examination.

By Mr. Wesner:

Q. You don't know how many fat hogs, how many stock hogs, or how many shoats or feeders there were in Henry County, on June 1st, 1926, do you?

A. No; I don't.

Q. Or how many fat cattle or neat cattle?

A. No.

Q. Or canners?

A. No.

Q. Or stags, or feeders or lean cattle there were in Henry County, on June 1st, 1926, do you?

A. No.

Q. You don't know how many sheep ready for market; how many sheep on pasture; how many sheep fat, or feeders, or how many lambs there were in Henry County, on June 1st, 1926, do you?

A. No; I don't.

Q. You don't know how much farm machinery, as to the pieces—implements of different kinds and character, their ages—use for a term of years or for a short period of time, there were in Henry County, on June 1st, 1926?

A. No, sir.

Redirect examination:

Q. You do know—or, do you, or not, know, that there were a great many hogs marketed between the 15th of June and the 15th of July, in Henry County?

By Mr. Wesner: That is clearly immaterial.

Q. I will ask you this question—do you know whether or not, that most of the fall pigs are marketed between the [fol. 148] 15th of June and the 1st day of August, in Henry County?

A. Well——

Q. Fat hogs?

A. I would't say the most of them; hogs in the last decade or so have gone on the market more regularly than they formerly did; I think there is a greater proportion of the hogs go on the market during the period of which you speak.

That's all.

(Witness excused.)

Mr. H. P. Faris, being recalled by Mr. Rucker, testified further as follows:

Q. Are you familiar with the financial statements made by the Farmers' & Merchants' Bank of Montrose, June 1st, 1926?

A. One made in April, just before the 1st of June; I went over the published statement required by the Bank Commissioner of Jefferson City.

Q. Did you compare the assessed valuation with the valuation shown in that statement?

A. I did.

Q. How did they compare?

A. Within about fifty dollars of each other; a little blunder—I forget what it was between—I think a thousand dollars, between the published and the assessed statement.

Q. As a matter of fact, it was less than a hundred dollars, wasn't it?

A. Might be less than a hundred dollars, after this blunder—I think, between the 30th of April and 1st of June.

[fol. 149] Q. Is that bank still running?

A. No, sir.

By Mr. Wesner: Object; immaterial and irrelevant.

By the Court: Objection overruled.

Q. What happened to it?

By Mr. Wesner: Object to that as immaterial and irrelevant.

Objection overruled.

Q. What happened to the cashier of that bank?

A. He is dead.

Q. Is the bank in process of liquidation?

A. I guess about liquidated; I don't believe the Bank Commissioner has been discharged, but I guess it is about all liqudated; as far as I know.

Q. Being liquidated in this court here?

A. Yes, sir, in the—before the Missouri Commissioner of finance.

Q. And in this court?

A. Yes, sir.

Q. What did it pay?

A. The value of the stock?

By Mr. Wesner: Object to that testimony as irrelevant and immaterial, and ask that it be stricken from the record.

By the Court: Objection overruled.

(Witness excused.)

By Mr. Rucker: If Your Honor please, we desire to offer at this time that portion of the United States Census of Agriculture, taken under the authority of Act of Congress, passed on the 3rd day of March, 1919; all that par-
[fol. 150] ticular part appearing on page 939 of the report, as it applies to Henry County.

By Mr. Wesner: We object to the introduction of this book, first, for the reason that it isn't a table or summary by which any taxing or assessing officer of Clinton Township or of Henry County, Missouri, or of the state, would be bound by; second, that it is merely an estimate of the different kinds of animals—horses, mules, cattle, sheep, cows, swine, chickens and other livestock, per head, for the years, January 1st, 1925—and for livestock and products for the years 1924 and 1929, which years, and neither of such years are in question in any of the issues of this case; and could not apply, in any way; and it could not necessarily follow that because there were any one number of head of any kind—cattle, horses or any other kind of animals in Henry County for that one particular year, it would not necessarily follow that there was that many kinds in number for any other particular year; and for the further and additional reason that said table and its contents is immaterial and irrelevant, and doesn't prove nor tend to prove any of the issues of this case.

By Mr. Calvird: Object further; for the reason that these are statistics gathered by the author of that book, not now present and subject to cross examination, as to his method or manner of gathering the data, and as to the correctness and thoroughnes of the data.

[fol. 151] By the Court: Objection overruled.

Mr. Rucker reads summaries to court:

Horses	$464078
Mules	280856
Cattle	1045057
Sheep	56426
Swine	541323
Chickens	426482
Other livestock	20582

By Mr. Rucker: Likewise desire to offer that part of page 923, that shows the value of farm implements and machinery.

$901272.

By Mr. Wesner: Please Your Honor, we interpose the same objection to the introduction of the last page of the book Mr. Rucker has offered, as we already had interposed to that as formerly—the former page that he offered of values. And this last page I want to renew to it my objection, to the effect that these are figures made by—computed by persons who are not taxing or assessing officers, of Clinton Township, Henry County, Missouri, or the State of Missouri, and wouldn't in any wise effect the values fixed by said officers, whose duty it was under the law to do so; and that they are not evidence and don't fix, nor can they be evidence that should be considered in controversion of those assessments.

Objection overruled.

[fol. 152] Mr. W. M. Stevens, of lawful age, being produced, sworn and examined by Mr. Montgomery, testified on behalf of the plaintiff, as follows:

Q. State your name and place of residence?
A. W. M. Stevens; Clinton, Missouri.
Q. What is your occupation, Mr. Stevents?
A. Real estate and loan.
Q. How long have you been in business—the real estate and loan business?
A. 28 years.
Q. How long have you been in Henry County?
A. Sixty years.
Q. Have you ever held any public office?
A. Yes, sir.
Q. What public offices?
A. I was county treasurer four years; recorder then four years.
Q. Are you connected with any building and loan association?
A. How's that?

Q. Are you connected with any building and loan association?

A. No, sir.

Q. To what extent does your business require you to familiarize yourself with values of real and personal property in Henry County, and Clinton Township?

A. Why in selling land and buying land and making loans; in making loans on real estate, we have to find out exact costs of a farm—then we have to have the assessed valuation.

Q. You require that particular valuation of land that comes into your office, in order to know what the man who [fol. 153] wants the loan paid for the farm, and the actual consideration?

A. Yes, sir.

Q. So that you know what the farm is assessed at?

A. Yes, sir.

Q. That is an invariable requirement?

A. Yes, sir.

Q. You have been for 28 years in that kind of business?

A. Yes, sir.

Q. What, in your judgment, Mr. Stevens, is the relation between the assessed valuations of real estate in the town of Clinton, or in the township—Clinton Township, to the actual value of the real estate, generally speaking?

A. Well, it runs about sixty-five or seventy-five per cent.

Q. From 65 per cent to 75 per cent?

A. Yes, sir.

Q. Did you take part in the making of any set of the abstracts of conveyances prepared by Mr. Holliday, that you heard him testify about?

A. Yes, sir.

Q. Did you see all of those cards?

A. Most all of them; yes, sir.

Q. Did you go over them?

A. Yes, sir; most of them.

Q. And discussed them?

A. Yes, sir.

Q. Do you know what proportion those cards showed, after they had been worked out—of the assessed valuations to the real values?

A. I disremember, I think now they run about seventy—or sixty-five to seventy-five per cent.

[fol. 154] Q. It has been some months since you have seen them?

A. Yes, sir.

Q. In fact you haven't seen them since they were put in the Brinkerhoff-Faris Trust Company's office, three or four months ago?

A. Yes, sir; or five or six months ago.

Q. Do you know what sheep are generally assessed at in this county, or in this township?

A. No.

Q. In 1926?

A. No.

Q. Have you any knowledge of it?

A. Not personal knowledge.

Q. Do you know what the value of sheep were in this township in June, on June 1st, 1926; or do you know if you might refresh your memory from the current stock quotation?

A. You mean cattle and sheep?

Q. Sheep?

A. No, I haven't paid any attention to them; don't make any mortgages on them.

Q. Well, do you know anything about cattle?

A. Not very much.

Q. Would you be able to take the current stock quotation, and say what cattle were worth in this township, on the 1st of June, 1926?

A. I wouldn't want to.

Q. How do you feel about hogs—how is it, speaking about hogs?

A. About the same way.

Q. You don't consider yourself an expert?

A. No, don't consider myself an expert.

[fol. 155] Q. Do you know to what extent of its actual value household goods have been assessed in this township and in this town on June 1st, 1926?

A. I have occasion just to look at a few.

Q. Well, what is your judgment as to the percentage of its true value?

A. They run about 20 per cent to 25 per cent.

Q. Do you know, Mr. Stevens, anything about the practice of assessors of this township, in assessing sucking young animals?

A. No, I don't.

Q. You don't know about that; do you know about the market value of horses and mules?

A. No.

Q. Do you know anything about how much farm machinery there is in this township?

A. No, sir; I don't know anything about anything except land.

Q. Are you familiar with merchants' stock; do you know how they are taxed, in proportion to their value?

A. I don't think I do.

Cross-examination.

By Mr. Wesner:

Q. You are connected with the Citizens' Bank, aren't you?

A. You will have to speak louder.

Q. I say, you are connected with the Citizens' Bank in Clinton, aren't you?

A. Yes, sir.

Q. A member of the board of directors?

A. Yes, sir.

Q. Mr. Stevens, you said you had examined only a few assessment lists as to household goods?

A. How's that?

[fol. 156] Q. Did I understand you to say you had examined only a few assessment lists, as to household goods?

A. That's what I say.

Q. And you don't propose to tell the court at this time, that you know how much, or how many different houses are furnished with high valued household goods, or practically how many have no more than one chair or two and a table and a stove?

A. No; just with the two or three that I have run across.

That's all.

(Witness excused.)

Judge J. B. Redford, of lawful age, being produced, sworn and examined by Mr. Montgomery, testified on behalf of the plaintiff, as follows:

Q. What is your name?
A. J. B. Redford.
Q. How old are you?
A. Fifty-one.
Q. Where do you reside?
A. Clinton, Missouri.
Q. How long have you lived at Clinton, Missouri?
A. Twenty-three years.
Q. How long have you lived in Henry County?
A. All my life.
Q. What official position have you held in this city, or in this county or township?
A. Recorder, and probate judge.
Q. How long were you recorder?
A. Four years.
[fol. 157] Q. And probate judge?
A. Eight years; I was deputy recorder four years.
Q. So you were in the recorder's office, the probate judge's office, together, sixteen years?
A. Yes.
Q. What is your business, now, Judge?
A. Well, abstracts, loans and insurance.
Q. Does your business require you, or give you an opportunity—Judge, to include this all—has your business ever required you, and does it now require you and give you an opportunity and occasion to acquaint yourself with the values of real and personal property in the Town of Clinton and in Clinton Township?
A. Real property, it does—real estate—but not personal property.
Q. Have you ever had any experience with stock, either raising it or selling it, or anything of that kind?
A. It has been very limited.
Q. Well, to what extent have you had experience with stock; and how far do you consider yourself qualified to pass upon the values of stock per head, if you were shown a current market quotation?
A. I don't feel I would be qualified to pass on that.

Q. Well—now, then, going to the real estate; what is the proportion—what is the relation between the assessed value, generally speaking, now, the real estate in Clinton Township, as compared with its actual value?

By Mr. Wesner: We object. Of course, we want the court [fol. 158] to understand, we are objecting to all of this; and all of this expert witness' testimony.

By the Court: Yes.

A. I had better qualify myself, in the way I have secured what information that I do have. We represent five or six different loan companies, and I am examiner for two of them; and work in conjunction with the regular examiner of other companies, and I know that the real estate values have fluctuated and do fluctuate; and I know this, because we put different values on the same piece of property, and it is hard to determine—they all say it is hard to determine the real value; and, in checking over the valuations of real estate that we have made loans on, I would say that the value, as compared with the assessed valuation in the county would run from sixty to seventy-five per cent; although in certain instances, and a number of them, it has run over a hundred per cent.

Q. There are sporadic cases of over-assessment?

A. Yes.

Q. Are you familiar with the general policy of assessing household goods?

A. No, sir; I am not.

Q. Do you know whether there is any common knowledge of that—as to the general policy as to that—the policy——

By Mr. Wesner: I submit to the court; the witness said he didn't know.

Q. Do you really mean that, Judge?

By Mr. Wesner: I object to the attorney asking the witness whether he meant it or not.

[fol. 159] By Mr. Montgomery: I think that is improper; I will take it back.

Q. What were you going to say?

A. I was only going to say this; my knowledge would only extend to two or three different cases—probably two

or three cases that have been called to my knowledge, or that I have had occasion to look up, and I wouldn't want to pass on the matter from a limited number of cases.

Q. I wouldn't want you to, from a small number of cases, Judge——

By the Court: I want to ask you; you say that real estate, you think that the assessed value is about sixty to seventy-five per cent?

A. In the main.

Q. Of the value?

A. In the main.

Q. Now, how do you fix the value?

A. I fix the value from my own valuation as made in regard to loans, and in the valuation of the different examiners that we work with, in connection with the different loan companies we loan for, and, in addition to that, a number of sales that I have observed; that I had occasion to have called to my attention—that I have known of personally; that that is the basis of my testimony.

Q. I just want to get an idea. In your appraisement of the valuation for loan purposes, you would value it a little higher than it will sell for, if it was offered on the market?

A. Well, in some cases it is valued higher.

[fol. 160] Q. And you only loan a certain per cent?

A. Yes. I might explain a little further, if you permit me, that ownership, or the risk, if you—if I may put it that way—enters into a great extent in the valuations in connection with loans.

Q. You don't place it upon the revenue possibility per acre?

A. No, we don't; in one sense the market value hasn't everything to do with it, but, however, that does have a great deal to do with it, and the ownership has an unusual amount to do with the valuation as put on real estate for a loan; I have known of a number of cases where the loan companies have had examiners examine property and put a valuation on it, and in a short time that property was foreclosed for probably a third less than the valuation; and that's the reason I gave the statement that the valuation fluctuates and varies.

Q. Well, it is difficult to fix a true valuation on farms in this county?

A. Yes, sir.

Q. And has been for several years?

A. Yes, sir; that's true.

Q. From your knowledge—you testify that is in regard to the county; are you fairly well familiar with that over the entire county?

A. I was as familiar with the county as I am with this particular township; because my operations in connection with loans extend over the entire county.

[fol. 161] By the Court: Well, that's all.

(Witness excused.)

Judge J. C. Beaty, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of the plaintiff, as follows:

Q. State your name, please?

A. J. C. Beaty.

Q. What official position do you hold in Henry County?

A. Presiding judge.

Q. Were you presiding Judge in June, 1926?

A. Yes, sir.

Q. Tell the court, Judge, what the policy in this County is, with reference to assessments of suckling animals?

A. I don't think usually they are ever counted.

Q. Well, are they assessed?

A. No, sir; I think not.

Q. What is the policy relative to the assessment of chickens?

A. None.

Q. They aren't assessed?

A. No, sir.

Q. What is the policy with reference to the assessment of hogs, cattle and sheep?

A. We instructed all the assessors to assess everything at a hundred per cent—a hundred cents on the dollar; that is our instructions.

Q. Well, you see the return of the assessors, of course?

A. Well, I don't pay much attention to them.

Q. You know something about the values which is assigned to livestock?

A. Well, a little, I expect.

[fol. 162] Q. Well, sheep, an average of $4.50?

A. I don't know anything about sheep.

Q. You don't know anything about the values?

A. No; I never handled sheep in my life.

Q. Don't know anything about it?

A. None in my neighborhood.

Q. No—that's all.

(Witness excused.)

Mr. VANCE J. DAY, of lawful age, being produced, sworn and examined by Mr. Rucker, testified on behalf of the plaintiff, as follows:

Q. State your name?

A. Vance J. Day.

Q. What is your occupation?

A. Banking.

Q. Where do you reside?

A. Clinton.

Q. With what bank are you connected?

A. Clinton National.

Q. Are you familiar with the valuation of live-stock in Henry County?

A. Yes; in a way.

Q. Were you acquainted with the value of live-stock in Henry County, in June, 1926?

A. I was at that time; but I have no recollection now what the valuations were then.

Q. How did you arrive at values then, in June, 1926?

By Mr. Wesner: I object; immaterial, how he arrived at the values at that time.

By the Court: Yes. I think so.

Q. All right; if your memory were refreshed with the stock report, would you be able to tell the court as to the [fol. 163] value of sheep, swine and cattle, what the value was on June 1st, 1926?

A. Yes; any man who can read can do that: yes, sir.

Q. Well, have you had any experience yourself in feeding cattle?

A. Yes; I have handled cattle more or less all my life.

Q. Well, were you handling cattle in June, 1926?

A. I don't think I had any on hand at that time, except probably some cows on the farm.

Q. I hand you the market report, Exhibit "H," and ask you to look at it; now could you tell the court now what lambs were worth—the average lamb—June 1st, 1926?

A. Native lambs, or Western lambs?

Q. Native lambs?

By Mr. Wesner: Where?

Q. Well, I am speaking of Henry County—of course the court understands that all these questions have reference to Henry County?

By the Court: Yes.

A. Well, I don't see any quotation on lambs so far—here it is here: Native lambs sold for $17 down to $16.25.

Q. What would that mean an average lamb was worth per head?

A. Well, average weight of lambs—that is, on that day—I would say was around sixty pounds; and the average price $16.

Q. That is, $16 per hundred, or $16 per lamb?

A. Sixteen dollars per hundred.

Q. That would make a lamb worth about——

A. Something like $9.00.

[fol. 164] Q. Up to $9.60; now do you know what sort of lambs they had generally in Henry County; are they Missouri, native, or Western lambs?

A. Practically they were all of them native lambs; I don't think I've seen anything but a native lamb since I've lived in town.

Q. From your knowledge of farming conditions in Henry County, tell the court how the number of lambs on the first day of June in any year compare with the number of aged sheep?

A. With the number of aged sheep?

Q. Yes, sir.

A. I would say about fifty fifty.

Q. You mean there are the same number of each?

A. Yes, sir.

Q. Now what is the value of a lamb on the first day of June, as compared with the value of a ewe?

A. Well, that would depend altogether on the prices; I would have to refer to the paper again, to tell what it was on June 1st, 1926.

Q. All right—well, ordinarily, irrespective of that?

A. That could vary; sometimes ewes could be cheap and lambs high; that would be hard to make a comparison on.

Q. But, ordinarily, a ewe—a lamb is worth at least as much as a ewe, isn't it—a sucking lamb, on the 1st of June?

A. I don't know; I would say they were; sometimes you just can't tell.

Q. Well, how was it on the 1st of June, 1926; wasn't a lamb worth more than a ewe?

[fol. 165] By the Court: Do you mean a sixty pound lamb?

Q. Well, it was worth more than a ewe?

By Mr. Wesner: That is leading and suggestive.

A. Yes—why yes, according to this paper, it would be.

Q. Well, now do you know, as a matter of fact, the weight around the first of June—that is after the clip has been made?

A. The clip of the ewe?

Q. Yes; your sucking lamb on the first of June ordinarily weighed more than the ewe?

A. I would judge on an average they do; yes, sir.

Q. Yes, they would ordinarily, all right--Now can you tell us what the average price of a hog was on the 1st day of June, 1926?

By the Court: I just suggest, I don't think he made the average of the ewe to the lamb.

Q. You said the lamb was worth more than the ewe; tell the court now what the ewe is worth?

A. Well, according to this paper, the average sheep, about $8.00—for the ewe?

Q. And $9.60 for the lamb?

A. Yes.

Q. Now then, the average price of a hog per head?

A. What class of hogs?

Q. Well, just asking for the average hog; they are all lumped together aren't they, on the market; isn't that a lump price given?

A. The bulk of all good hogs sold that day, from $13.75 to $14.

[fol. 166] Q. Do you know about what the cost is of getting the hogs from Henry County?

A. No, I don't; don't know exactly what it is; never figured that out per hundred.

Q. Are you acquainted with the kind and character of hogs that were grown in Henry County?

A. Yes.

Q. Are they good, fat, or native?

A. About the average.

Q. Average?

A. Yes, sir.

Q. Then what was an average 200 pound hog worth on the 1st of June, 1926?

A. $13.65.

Q. That is, a head?

A. No, $13.65 a hundred.

Q. That would be about $27.50 a head?

A. I didn't figure it.

Q. Well, it generally cost a dollar a head to get them up there?

A. Well, I don't know—I really don't know.

Q. Never had any experience with them?

A. I shipped hogs last week, but didn't figure it out.

Q. Didn't figure that particular bill?

A. Didn't figure out the cost.

Q. What was the average cow worth on the 1st of June, 1926?

A. Are you referring to fat cows, or stock cows?

Q. Refer now to milch cows?

A. Well, it would be pretty hard to tell the average on milch cows; on common stock cows there are prices quoted here; but milch cows are worth a good deal more than stock cows.

[fol. 167] Q. Well, what is the price——?

A. An average, common stock cows here, and cutters, on that day, a hundred——

Q. Per head, I am talking about?

A. Four dollars a hundred, and the average weights would be around—of the sales of that day—close to 900 lbs., that would be about $36 a head.

Q. That is about as common as they get; isn't it?

A. Yes, sir; that is common cows and cutters.

Q. What is the average run of cattle worth—the kind they grow here in Henry County, and ship out, do you know that?

A. What is the question?

Q. You say you are acquainted with the character and kind of cattle that the farmers of Henry County grow, aren't you, and feed?

A. Yes.

Q. And ship; now, taking that kind of cattle into consideration; what were they worth per head, on the first of June, 1926?

A. Oh, they would be worth a good deal more than that, unless they are the cheapest class of cattle about that there is.

Q. In fact there are few of that class of cattle that are shipped out of Henry County, isn't that true?

A. Yes.

Q. I am asking you about the kind that they do ship out, what are they worth a head?

A. Here is—judging the market of that day—the cows would average about six dollars; and the average weights will run—I am aggregating this—will run close to a thousand pounds.

Q. That is about sixty dollars a head for cows?

A. Right around sixty dollars a head.

[fol. 168] Q. Now, butcher stuff; what is that worth?

A. Well, those cows are butcher stuff.

Q. All right; now going on, to steers; what are they worth?

A. Well, the best steers shipped that day was $9.90; the average would be around $9.00.

Q. What weight?

A. The average weights will run close to 1,100, for that day.

Q. Any of that kind of cattle shipped out of Henry County?

A. Yes; plenty of them.

Q. Now, what are calves worth?

A. You mean stock calves, or——
Q. Well, veal—calves, say; what are they worth?
A. Worth about $11 that day.
Q. $11 a hundred?
A. Yes.
Q. What does an ordinary veal calf weigh?
A. About 150 to 160 pounds.
Q. Veal calves are the suckling calves, are they not?
A. Yes, sir.
Q. Do you know anything about the number of suckling calves in Henry County on the 1st of June in any year, as compared with the number of cows—the stock cows and milch cows?

By Mr. Wesner: Object; too general and indefinite; a a pure matter of speculation.
By the Court: Well, you can answer if you know; do you know what——

A. No; I couldn't answer that.
Q. You have no idea, at all?
A. No.
[fol. 169] Q. Do you know what proportion of the value of household furniture is represented in the assessed valuation in this County?
A. What proportion of the value?
Q. Of the cash value; as represented by the assessed valuation?
A. No; I don't know what it would be.
Q. Well, is it assessed at full value?

By Mr. Wesner: I object; he said he didn't know.

Q. Do you, or not, know whether it is assessed at full value, or not?
A. In every case, or in an individual case?
Q. I am—I mean, generally speaking?
A. No; it isn't.
Q. What is the answer?
A. It isn't assessed at full value.
Q. Do you, or not, know whether it is assessed, general-speaking, at seventy-five per cent of its full value, or not?
A. I would say not.

Cross-examination.

By Mr. Wesner:

Q. Mr. Day, I would like to ask you if you purport to tell the court whether or not you know of how many fat cattle there were in Henry County, on June 1st, 1926; how many cattle on feed, and canners or cutters, or whatever they are called, and cattle ready for market—do you know the number of the different cattle?

A. No.

Q. Or what different qualities and values of horses—[fol. 170] good horses, fat horses, poor horses, draught horses, work horses, horses on pasture?

A. No; I know very little about horses.

Q. Mules?

A. I don't know anything about mules.

Q. Do you know anything about the different number of the different clases and kinds of sheep; sheep ready for market, sheep on pasture, or the number of suckling lambs, in Henry County or in Clinton Township, on June 1st, 1926?

A. No.

Q. Do you know anything about the number of houses in Henry County or in Clinton Township that are furnished with valuable furniture, and those that are furnished with medium furniture, and those furnished with very common, and practically no furniture?

A. I don't—I didn't get that last question.

Q. I'm asking you if you know how many different homes there are that—with these different kinds of furniture in value in them?

By Mr. Montgomery: I object to that question; that question absolutely has no bearing whatever upon any issue in this case.

By the Court: You might ask him how he arrives at his answer, as to the assessment of household furniture.

By Mr. Wesner: I want to ask him if he knows how many different dwelling houses and residences in Clinton Township and in Henry County, Missouri, are furnished with elaborate furniture in the first instance, in the second in-[fol. 171] stance with moderate furniture and in the third instance with medium furniture, and in the last instance,

those homes furnished with only a very meagre amount of furniture.

By Mr. Montgomery: I object; it is immaterial; wastes the Court's time and ours; it doesn't make any difference as to the different groups of homes; it is how it is valued; that's all.

By the Court: Well, now, I don't know; can you specify any instance where household goods have been assessed at only 75%?

By Mr. Calvird: I object to picking out specific instances.

By the Court: I'm asking that for myself.

By Mr. Calvird: We object.

By the Court: Do you know of any?

A. Yes, sir.

By the Court: Well, now, how do you arrive at the value of household goods, are you comparing it with the cost price, or taking into consideration the fact how it would sell as second-hand furniture, as compared with the first price—the market value?

A. I think you could appreciate that it was worn, couldn't you?

Q. That's very difficult to do, isn't it?

A. If you get close enough to it.

By the Court:

Q. That's what I would like to know; just how they decide, about the way that they arrive at the value of the household goods; how they get at the value, as compared [fol. 172] with things that are worth a hundred cents on the dollar.

By Mr. Wesner: Our position is this witness hasn't shown himself to be in position to give in such testimony at all; because he hasn't viewed this property, and is trying to dispute the opinion of the assessor of this Township and State who have made and put a value on it.

By the Court: Well, you have the privilege of putting in that testimony; I will overrule the objection.

A. I do not know the number of dwelling houses in Clinton Township that are furnished with different kinds of furniture.

By the Court:

Q. Those instances you speak of in your statement as to the assessment of household goods and furniture, are not occasional or exceptional, but it is general?

A. Yes, sir, general; the ones I know of.

Redirect examination.

By Mr. Rucker:

Q. Are you pretty well acquainted with the people who own motor cars in this township?

A. I am acquainted with the people; yes.

Q. You are acquainted with the people?

A. Yes.

Q. Have you seen a good many of the cars?

A. Yes.

Q. Do you know about the kind of car the average man drives; do you know generally what kind of automobile a man drives?

[fol. 173] By Mr. Wesner: I object to that; vague and general.

By the Court: Objection overruled.

A. Yes.

Q. Well, assuming that the average assessed valuation of the automobiles in Clinton Township is $121 per car; I will ask you whether or not that reflects the true cash value of those cars, or not?

A. In Clinton Township?

Q. Yes, sir, in Clinton Township, including the City of Clinton?

A. Well, that would be pretty hard to answer, because there are a lot of cheap cars; on the other hand there are a lot of fine cars, and it would be hard to average those up in a general way.

Q. Well, if you feel that it would be, of course, you wouldn't——

A. Well, I don't think any man, in general could answer that question.

Q. All right, if you can't answer it; that's all.

By Mr. Wesner: Renew, of course our objections to the different testimony that has been introduced by this witness and other witnesses on this point.

By the Court: Yes.

Q. Did you make return for your bank on the first of June, 1926?

A. Yes, sir.

Q. Did that return show the true book value of the stock?

A. Absolutely; yes, sir.

Q. Did you know what the statute required you to show?

A. Yes, sir.

[fol. 174] Q. Did you show all those various items?

A. Yes, sir.

Q. Now what proportion did the assessed valuation bear to the true book value?

A. I don't know whether I get the question.

Q. Well, was it assessed at more or less than the book value?

A. Why, it was assessed at exactly the book value.

Q. Went in at a hundred per cent, then?

A. Yes, sir.

(Witness excused.)

Mr. H. P. Faris, recalled by Mr. Rucker, testified further on behalf of plaintiff as follows:

Q. Are you acquainted with the financial status of the Citizens' Bank of Clinton?

A. I am; the last published reports.

Q. June 1st, 1926—have you examined the return made by that bank June 1st, 1926?

A. Yes, sir.

Q. What proportion, or what relation did the per cent—what per cent was the assessed valuation of the true valuation, as shown by that report?

A. A hundred cents on the dollar.

By Mr. Wesner: Renew objections; and ask that it be stricken from the record, for our reasons heretofore given.

By Mr. Calvird:

Q. Mr. Faris, what does the report show there the stock is worth?

[fol. 175] A. I couldn't tell you now; I can get it on the book and tell you, if you want it.

Q. As a matter of fact, doesn't it show that it is worth $82.00—the stock?

A. Worth more than $82.

Q. Doesn't it show a net value of $82?

A. Shows more than that.

By Mr. Rucker: Here it is; total face value is $25000.00 that is a hundred dollars a share?

A. That shows it is worth over $200.00 a share.

By Mr. Calvird: Isn't the actual value of that stock $400.00 a share—so valued and held.

By Mr. Montgomery: Your Honor excluded that.

By the Court: Well, I don't think that is proper.

By Witness: Well, I don't know.

(Witness excused.)

(Adjournment taken, to Thursday, January 24, 1929.)

By Mr. Rucker: I offer in evidence one item from the United States Census of Agriculture of Missouri of 1925, as it relates to Missouri, found on page 909 of the census, as follows: "Number of farmers in Henry County, 2792 in 1925."

By Mr. Calvird: I object to that, for the reason that those statistics are prepared by some persons to the defendant unknown, the person or persons preparing same not being in court, subject to cross examination on the [fol. 176] part of defendant; and for the additional reason that it is immaterial and irrelevant, and doesn't tend to prove or disprove any issue in this case.

By Mr. Wesner: In addition, defendant renews each one of the objections made at the institution, or the beginning of this trial; and for the additional and further reasons, that there is no plan or information given as to how these statistics were arrived at, or compiled; and for the additional and further reason, that all of the evidence as to values and valuations introduced by plaintiff are ob-

jected to, because it is an attempt to dispute the figures—the assessments and findings made by the officers of Clinton Township, Henry County, Missouri, and the State of Missouri, whose duty it was under the law to so find; and that this evidence isn't such evidence at this time as could be used to affect or controvert the findings of such officers, and that the person whose findings he is offering isn't under oath and not present for cross examination.

By the Court: Objection overruled.

By Mr. Rucker: I desire to offer in evidence that part of the report found on page VI-6.

Shown to court.

By Mr. Wesner: Renew all of our objections as to this additional offer of testimony of the plaintiff; and I object to the introduction of this last offer in evidence, for the [fol. 177] further reason that the recent courts and opinions—that the information com*l*ied by the officers or the persons who describe and compile such evidence in Henry County, would be the best evidence, and that this evidence, at this time, is immaterial and irrevelant, and doesn't tend to prove or disprove any issue in this case.

By the Court: Objection overruled.

By Mr. Rucker: I desire to ask the stenographer to identify these offers: Marked Exhibits G to K, inclusive.

By Mr. Rucker: Now I desire to announce to Your Honor, the chief officers in the bank involved in these assessment lists which I have just had the stenographer identify, are unable, on account of the condition of the roads, to be here; they have been duly subpoenaed, but can't get here; it is physically impossible; so we desire to offer these various returns made by these banks; they are under oath, part of the files of the county clerk's office, that have to do with the State Bank of Brownington, the Bank of Calhoun, Peoples' Bank of Calhoun, the Montrose Saving Bank and the Bank of Blairstown. I will not take the time to read them to Your Honor; I will just say that the returns show the face value of stock to be exactly the same as the assessment lists here shows.

By Mr. Wesner: Renew all of our objections heretofore made to all this class of testimony. Further object, that [fol. 178] they are immaterial and irrelevant, and don't tend to prove or disprove any issue in this case.

By the Court: Objection overruled.

EXHIBIT "G"

This is taken from page 939 of the Federal Census of Agriculture of 1925 and from County Table III. Live stock on farms of Missouri, January 1st, 1925 (See page 939 of Part One of United States Census of Agriculture, 1925, taken under the Act of Congress, March 31, 1919). Live stock on farms in Henry County, Missouri, January 1st, 1925.

Total value of horses, $464,078.00.
Total value of mules, $280,856.00.
Total value of cattle, $1,042,057.00.
Total value of sheep, $56,426.00.
Total value of swine, $541,323.00.
Total value of chickens, $426,482.00.
Other live stock, estimated value $20,582.00.

EXHIBIT H

Taken from the Federal Census of Agriculture of 1925, from page 9239, of Part One thereof. It is part of what is designated County Table II, miscellaneous items.

Farm implements and machinery, 1925, value in dollars, $901,272.00, in Henry County, Missouri.

EXHIBIT J

Taken from the Federal Census of Agriculture of 1925, County Table I, farms and farm acreage, 1925, in Missouri. [fol. 179] Number of farms, 1925, in Henry County, Missouri, 2792.

EXHIBIT K

This is the foreword of the report of the United States Census of Agriculture of 1925 found on page VI of Part One thereof.

The data contained in this report cover the principal items of information secured at the census of agriculture, January 1, 1925, which was the first midecennial census of agriculture taken by the Federal Government. The report is issued in three parts, covering, respectively, the States of the North, the South, and the West, as shown on the reverse of the title page.

The limited character of this census is apparent from the fact that while the schedule used in the census of agriculture in 1920 contained 415 inquiries concerning the operator, acreage, values, indebtedness, operation and production of the farm, that used in 1925 contained only 178 inquiries. Copies of the schedule and the instructions to enumerators relative to its preparation in the field appear as an appendix of this volume.

A schedule was returned for each of the 6,371,640 farms in the 48 States and the District of Columbia. The information on these schedules was secured by actual canvass by a force of 23,945 enumerators operating under 204 supervisors. The schedules were given a preliminary review by the supervisors, and on reaching the Bureau of the Census they were first counted, arranged by minor civil divisions, [fol. 180] and numbered, after which they were examined and edited by a force of clerks numbering 366, to eliminate inconsistencies. The information was then transferred to cards by the punch system by a force of operators numbering 691. Eight different forms of cards were used. The punched cards numbered 96,387,410, an average of 15.1 cards for each farm schedule. This process was followed by passing the cards through electric sorting and tabulating machines, the latter of which automatically printed the county totals on result slips. The equivalent of 230,670,515 cards, were sorted and 167,420,618 cards tabulated. The results were examined and summarized by a force of clerks numbering 221, and the tables for the bulletins and this report were prepared by a force of clerks numbering 123.

Mr. V. J. DAY, recalled by Mr. Rucker, testified further as follows:

Q. Mr. Day, I will ask you to tell the court whether you are acquainted with the value of the poultry in this county, or not?

A. You mean value in dollars?

Q. Well, if you can, give me that; if you can't—what acquaintance have you?

A. Well, I have a general acquaintance with the poultry business.

Q. Well, how was it acquired?

A. This acquaintance?

[fol. 181] Q. Yes, sir?

A. In consulting with farmers, and hatchery men and producers men.

Q. Well, did you just get it casually, or did you make an investigation for any specific purpose, or any definite reason?

A. Well, I made rather a close survey of the poultry business two years ago—last summer, for a special reason; that's the only time I ever made a special survey of it.

Q. Well, can you state the—in general terms, the extent of the industry in this county?

By Mr. Wesner: Object to that; immaterial and irrelevant as to what the extent of the poultry business is, as followed in this county.

By the Court: Objection overruled.

Q. Go ahead and answer the question?

A. I found the poultry industry one of the leading industries of the county among the farmers—not the greatest in dollars, but every farmer had a bunch of chickens; and we have three hatcheries here which are very substantial, and do quite a big business; and that's how I came to investigate it; I was interested in selling a proposition to a hatchery at another point; that is, out of the county, that's how I came to make the investigation: I found that the eggs sold to the hatcheries for hatching purposes in that season—during that season, in Clinton alone, amounted to three quarters of a million dollars.

Q. Well, could you give the court any idea about the number of chickens each farmer has?

[fol. 182] By Mr. Wesner: I object to him testifying, unless he knows.

Q. If he knows, of course?

By Mr. Wesner: I object to him giving an indefinite idea.

Q. Can you tell the court, approximately, how many chickens each farmer in the county has?

By Mr. Wesner: I object, if it please the court, to him testifying, unless he knows how many chickens a farmer has. Approximately, isn't sufficient, upon which to base an opinion; he is testifying now as an expert.

By the Court: Did you make data as you investigated?

A. I beg pardon?

Q. Did you make data as you went along, as to the general average on the farm?

A. No; I was investigating as to the hatchery business.

Q. Well, then, that is the extent of your actual investigation?

A. I expect what I know about what the farmers keep, is hearsay—as to chickens.

Q. Well, you couldn't testify about what each farmer kept?

A. No; not each farmer.

Q. You couldn't very well approximate it?

A. Well, it would just be a guess.

By the Court: If it would be just a guess, I don't think that is competent.

By Mr. Montgomery: We offer to prove by this witness that practically every farmer in Henry County, and in [fol. 183] Clinton Township, raises chickens; and that on the 1st day of June, 1925—1926; the average farmer in this county would have approximately 250 chickens—maybe more than that; we will prove by this witness that last year he operated a farm and had a thousand chickens at one time, and that the value of this industry is approximately as great as the value of the sheep, or as the value of the hogs of this county, at that time; that it is perhaps sixty per cent—fifty to sixty per cent, as valuable as the value of the cattle—neat cattle in the county, at the time of this survey; the purpose of this evidence being to prove that they deliberately, consistently and intentionally omitted property from this assessment list, which was of large value.

By Mr. Wesner: I object to it; and renew all our objections.

By the Court: Well, from your investigation of the farms of this county, if you can tell how many—of course you couldn't tell how many was on each farm—but the average number of chickens on farms in this county, why you can state, if you think you know.

By Mr. Wesner: I want to submit to the court that the witness testified himself that his investigation was as to the hatcheries; and that doesn't prove the chickens on the farms, or kept by the citizens of Clinton Township of Henry County, Mo.; and I further object to it for that reason.

[fol. 184] By Mr. Rucker: As I understood, the witness was making an investigation for the purpose of determining whether a hatchery would be a paying institution, and that his investigation called him all over the county—is that right?

By Mr. Wesner: He didn't testify to that.

Q. Is that correct?

A. It didn't take me out over the county; it took me to the hatcheries through which I made the investigation.

Q. Did you talk to any of the farmers?

A. No; I talked to the hatcheries.

Q. Did you go to any of the farms?

A. No.

Q. Have you been on farms in this county?

A. Yes.

Q. Many of them?

A. Many of them—a number of them.

Q. Operate a farm yourself?

A. Operated two farms; yes, sir.

Q. In your visits to the farms over Henry County generally, and in Clinton Township in Henry County, have you had occasion to observe or to talk to the farmers about the number of chickens they had?

A. Yes, sir.

Q. And what the income from the chickens amounted to, and so on?

A. I never talked to farmers about the income from chickens; talked to them about how many chickens they have.

Q. You have—farmers generally over the country?

A. Yes, sir.

Q. Large numbers of them?

A. Yes, sir.

[fol. 185] By Mr. Wesner: Renew objection to that heretofore made; and for the further reason, there is no time fixed by any statement by the witness as to what time he had been on these farms and talked about chickens, when it might have been, as to the years; and for the further reason that it is immaterial and irrelevant; and that his investigation clearly shows that he only investigated relative to hatcheries.

By the Court: Objection overruled: I can't tell; I will hear the evidence for what it is worth; let him state.

Q. What is your best judgment as to the number of chickens on the farm, June 1st, 1926?

By Mr. Wesner: Object to that question, for the reason that he hasn't shown himself to have any knowledge of how many chickens there are on farms in Henry County, in June, 1926; and hasn't shown that he was on every farm in Henry County, or every farm n Clinton Township; therefore, we submit to the court he isn't in a position to know, and couldn't know, and isn't qualified to give any such testimony at this time; it is a pure speculation and conclusion on the part of this witness.

Objection overruled.

Q. Answer the question, please?

A. I would say that there was on the farms in June, 1926, an average of two hundred chickens.

[fol. 186] Q. Tell the court if you know whether Henry County is a great poultry centre?

A. It is.

By Mr. Wesner: Object to [illegible], wholly irrelevant.

By the Court: Objection overruled.

Cross-examination.

By Mr. Wesner:

Q. How many farms were you on in Clinton Township, in June, 1926?

A. I couldn't tell you, exactly.

Q. Well, about how many?

A. Oh, I visited a number of farms.

Q. But that doesn't answer the question; about how many were you on?

A. I couldn't tell you the exact number.

Q. You won't, then, for the purpose of the record, attempt to give an estimate as to how many?

A. As to how many different farms I was on?

Q. Yes, sir?

A. Well, it would be an estimate.

Q. Yes, an estimate—do you?

A. Yes, sir.

Q. It would be a pure estimate?

A. Yes, sir.

Q. Pure guess?

A. Yes, sir.

Q. All right, how many?

A. Oh, I expect I was on twenty-five, probably.

Q. Twenty-five?

A. Yes—during that time.

Q. Now, how many of those twenty-five farms did you go to for the specific purpose of investigating about how many [fol. 187] chickens were on those farms?

A. Very few.

Q. Well, for the purpose of the record, state how many of the twenty-five?

A. Oh, not over ten.

Q. Not over ten—now, Mr. Day, how many farms are there in Clinton Township, Henry County, Mo.?

A. I don't know.

Q. You don't know; you don't have any idea?

A. No, sir.

Q. How many farms do you suppose, within the last five years, lying in Henry County, Missouri, have you been on?

A. Beg pardon; repeat the question?

Q. How many of the farms in Henry County, Mo., have you been on in the part five years?

A. How many farms?

Q. Yes?

A. A hundred.

Q. A hundred?

A. Yes, sir.

Q. How many farms are there in Henry County, Missouri?

A. I don't know.

Q. You don't know; would you give an estimate, for the purpose of the record, as to how many there might be?

A. No.

Q. You couldn't?

A. I don't know.

Q. You don't know; where are these hundred farms located that you have been on?

A. Mostly east and north of Clinton.

Q. Within a radius of how many miles?

A. Ten miles.

[fol. 188] Q. Ten miles?

A. Well, no, ten miles each way.

Q. That is a complete radius of twenty miles?

A. Yes.

Q. North and east?

A. North and east.

Q. Now, Mr. Day, do you know whether it is a fact, or not, that the chickens of this county weren't assessed?

A. No, I don't.

Q. You don't; do you know whether it is a fact that the hatcheries of this country are or are not assessed?

A. The hatcheries?

Q. Yes, sir?

A. I think they are assessed.

Q. I will as- you if your investigation which you have testified about, didn't indicate to you, and wasn't it a result of your investigation, that the principal amount of the value of the poultry industry that you have testified to, centered itself about and included the hatchery business in this section of the country; was that not the result of your investigation?

A. No, not necessarily; the hatchery business—the hatchery industry is a small portion of the produce business.

Q. I am not talking about produce business; talking about the poultry business?

A. Well, that's produce—the poultry business.

Q. You call that produce business?

By the Court: We are talking about chickens.

A. Well, that is produce.

Q. Butter and cream is produce, too, isn't it?

A. So termed, yes, sir.

[fol. 189] Q. You wouldn't attempt to state how many head of chickens, or fowls, or poultry there were upon the

various farms in Henry County or in Clinton Township, on June 1st, 1926, would you?

A. Wouldn't attempt to say?

Q. Yes, sir?

A. I thought I said so. Now, if you will allow me—every bank takes financial statements from its customers, and one of the questions in the past four or five years included in that statement is the amount of chickens that the man has.

Q. That information is really given to you, from the customers, through your bank?

A. Yes, sir.

Q. You don't know, and wouldn't attempt to say, what poultry or fowls that the assessor of this township, or of any other township in this county, viewed, for the purpose of assessments would you?

A. What he viewed?

Q. Yes, sir?

A. No.

By the Court: Don't undertake to go into that.

By Witness: I couldn't, anyhow.

That's all.

(Witness excused.)

By Mr. Rucker: We rest.

By Mr. Montgomery: Just one moment—well——

The defendant, to sustain the issues upon his part, produced the following testimony:

[fol. 190] Judge J. C. Beaty, of lawful age, being produced, sworn and examined by Mr. C. A. Calvird, Jr., testified on behalf of defendant, as follows:

Q. State your name?

A. J. C. Beaty.

Q. What official position do you hold in Henry County?

A. Presiding judge of the county court.

Q. How long have you been on the county court?

A. Six years.

Q. How long have you resided in Henry County?

A. All my life.

Q. What business are you engaged in?
A. Farming.
Q. How long have you been so engaged?
A. All my life.
Q. Judge, as a member of the county court, tell His Honor what the directions of the county court were to the Assessors when they went out to assess property in Henry County?

By Mr. Rucker: I object to that, unless he says that they directed the assessor to do something which was in violation of the statutory duty, because any directions he may have given, in the way of directing the performance of his duty, could be nothing but self-serving here—self-serving testimony.

By the Court: You brought that out yesterday.

By Mr. Rucker: We didn't bring out the self-serving part; asked him if he gave them direction about specific [fol. 191] things to assess—sucking animals, and so on; I didn't ask him generally.

By the Court: I believe he said he instructed them to assess all property at a hundred per cent.

By Mr. Rucker: Yes, sir; that's what he said.

By Mr. Wesner: I want to call attention to the fact that they have injected the testimony in this case that assessors have instructions from the county court to go out and assess property, and stating—Mr. Faris, in his testimony, stated that the assessor told him—Mr. Hill—that they had a flat rate of five dollars on sheep; now, please the court, we contend, in connection with that testimony, and by reason of the fact that it has been brought out by plaintiff in this case, that we have a right to show, not only by the county court but by the assessor as well, as to what the instructions were.

By Mr. Rucker: I have no objection in the world to him asking him specifically in regard to sheep, because of the previous testimony.

By the Court: They really have an allegation that all property was assessed at a hundred per cent of its true value; to show that all property was assessed at that, I will let them testify.

By Mr. Rucker: All right.

To which ruling the plaintiff then and there excepted; and now excepts.

A. Well, I instructed the assessors to assess everything the full value in money.

[fol. 192] Q. Now did you give them any instructions, Judge, about assessing any particular kinds of property?

A. I don't exactly get the question.

Q. Well, as to how they were to assess land, or live-stock?

A. No, sir.

Q. Anything of that kind?

A. No, sir.

Q. As to how they were to assess sheep or lambs—give them any instructions?

A. No; I don't think the court give them any instructions at all, whatever.

Q. Except to assess everything at full value

A. Full value; yes, sir.

Q. As presiding Judge of the County Court, you are also a member of the Board of Equalization?

A. Yes, sir.

Q. You met as a Board of Equalization?

A. We did.

Q. Did you go over the assessments that had been made by the assessors for the year 1926?

A. We went over all the books of the assessments.

Q. Did you equalize—as a Board of Equalization, to the best of your ability, those assessments?

A. We did.

Q. And tell his Honor whether, in your judgment, to the best of your ability, all properties in Henry County were equalized, so that the assessments were at their full value in money?

A. It was.

Q. Who constitute the Board of Equalization?

A. Well, the County Court, the Highway Engineer and the assessor and the sheriff.

[fol. 193] Q. The sheriff at that time was Mr. Markle?

A. Yes, sir.

Q. Do you know whether Mr. Markle is in Henry County at this time, or not?

A. I don't.

Q. Tell His Honor whether there was any intent on—or any scheme, systematic scheme on the part of the County Court or the Board of Equalization to discriminate against any property in Henry County, Mo.?

By Mr. Rucker: Just a moment——

By Mr. Montgomery: I object to that, for the reason that it doesn't show, that there was any malice on the part of any officer, or that the County Court or County Board of Equalization took any part in this effort to under-assess certain property—no conspiracy is charged between the assessor and the County Board of Equalization.

By Mr. Rucker: Another reason, if Your Honor please: We charge, of course technically, that there was a system, deliberate plan—and an arbitrary plan; now that may arise as a matter of law from the facts; it isn't a matter of getting at what is in a man's mind, you can't meet that sort of thing; we object to asking the witness whether there was any intention to do it, or not.

By the Court: If their course of conduct results in legal fraud, or a discrimination, then, in law, that discrimination would be a legal fraud, whether it is done intentionally, or not, or with malice, or not; but I am going to have him [fol. 194] testify, because that is an issue here and he is entitled, as one of the board, to say whether he had any intention or not.

By Witness:

Q. There was none; absolutely none.

To which ruling the plaintiff then and there excepted and now excepts.

Q. Tell whether or not is was your purpose and intention, as a Board of Equalization, to equalize all property, so that the same would be assessed at its full value in money, and that, insofar as you were able to do so—using your best judgment—that that was done by you, as a Board of Equalization?

By Mr. Montgomery: We make the same objection.

By the Court: Overruled.

To which ruling the plaintiff then and there excepted and now excepts.

A. We do, yes, sir—that is a fact.

Q. Who were your associate members of the County Court in 1926?

A. Judge Ragland and Judge Kynon.

Q. Who was the assessor of Clinton township at that time?

A. M. N. Hill.

Q. And who was the other member of the Board of Equalization?

A. Sheriff Markell.

Q. And the other member?

A. The highway engineer; T. B. Parks.

Cross-examination.

By Mr. Rucker:

Q. You realized that the banks were assessed higher in proportion to the actual cash value than other property in [fol. 195] the county, didn't you, Judge?

By Mr. Wesner: Before he answers that, I submit to the court the question is improper; put as purely a statement of fact to the witness, and doesn't call for an answer from the witness at this time; it is an abstract proposition, or it would be an abstract proposition or fact, and isn't a question.

By the Court: I think if that is within his knowledge, he can testify.

Q. You realized that?

A. How is that question?

Q. You, as a member of the Board of Equalization, realized the banks were assessed higher, in proportion to the actual value, than other classes of tax payers, didn't you?

A. Well, I couldn't testify to it.

Q. You couldn't?

A. No, sir.

By Mr. Conrad: I object——

Q. Didn't you, as a board down there—as one of the members of that board—make an order, giving the banks a reduction in their assessed valuations?

A. A few of them.

Q. A few of the banks?

A. Yes.

Q. You didn't make a uniform reduction?

By Mr. Conrad: I object to that; that is a conclusion of law that that question implies; I object to the conclusion of law that that question implies, and to the line of questioning that has preceeded it and may follow, on the ground that arriving at the value in money of a thing, different ele- [fol. 196] ments are to be considered and are considered by the assessors and the Board of Equalization, as follows: the value in money of a thing cannot be arrived at conclusively, and I object to that line of reasoning, and want to object to the various lines of reasoning, for instance—First, what can the property be sold for; what does it sell for, or what is its market value—that, of itself isn't the only criterion; another criterion is what interest it is paying on the investment; what are the hazards connected with the ownership of it; a piece of farm land might bring only two or three per cent net on the investment, and bank stock might produce a much larger rate of income on the investment; these are different elements that must necessarily enter into the minds of the assessors, in arriving, to the best of their ability at their conclusion as to what the cash value of a thing is; any question that doesn't have in its purview the different paths by which the assessing and equalizing officers can arrive at their value, necessarily draws a conclusion of law, which we think is improper; and for that reason, this line of questions should be ruled out.

By the Court: Yes, I think he can testify to that; but I understood that you undertake to show that all the banks of this county were assessed at a hundred per cent?

By Mr. Rucker: They are, and were; but when that first came up to them, they reduced a lot of them, because they [fol. 197] thought that they were assessed too high, and the state board wouldn't permit it.

By Mr. Wesner: Want him to confine it to the year he's talking about.

By the Court: Yes, confine it to the year you're talking about; see whether, for what purpose it is.

Q. For 1926, didn't you all make reductions?
A. I don't think we did.
Q. Not that year?
A. I don't think we did.
Q. In April, 1926?
A. Don't think we did.

Q. In April, 1927, didn't you make some reductions?
A. If we did, I have forgotten it.
Q. What year was it you made reductions?

By Mr. Wesner: I object to that; being immaterial and irrelevant; witness doesn't have to answer an irrelevant question asked.

By Mr. Rucker: He said he didn't think it was; I want to call his attention to the fact that it was the year 1927.

By Mr. Wesner: The records of the County Board of Equalization would be the best evidence.

By Mr. Rucker: This is cross examination.

By the Court: He says he doesn't remember.

Q. Now, to refresh your memory, don't you recall, after I specifically attract your attention to it, that it was in April, 1927?
A. No, sir; I don't recollect it; have no recollection of it.

By Mr. Wesner: I object to that; it doesn't affect the merits of the case.

[fol. 198] By the Court: Objection overruled.

Q. Now, Judge, you knew that sheep were assessed in this county at a little over four dollars a head, didn't you?
A. No, sir, I didn't know about sheep.
Q. You didn't; didn't you just tell the attorney who examined you, that you went over all these assessment lists?
A. Yes. Well, they had the value listed, I think, probably five dollars.
Q. Yes, had a flat rate; as a matter of fact, it was supposed to be that way—that's true, isn't it?
A. Yes, sir; I think so.
Q. And as a matter of fact, they didn't quite come up to the flat rate?
A. Well, I don't remember.
Q. Now you knew that they weren't assessing sucking lambs, didn't you?
A. I didn't; I supposed they were.
Q. You know as a matter of fact, they didn't?
A. I know they didn't——
Q. Assess any kind of sucking animal?
A. Yes, sir; that is the custom.
Q. That has been the habit—the custom of the assessors in all of this county?

A. It has.

Q. And it still is the custom, not to assess sucking animals of any kind?

A. Yes, sir.

Q. Now you knew likewise, then, that they didn't assess lambs? A. No, sir; I think not.

Q. You mean that they didn't assess lambs?

A. No; I never heard of it.

[fol. 199] Q. Of course you knew that the chicken industry had grown tremendously in the last ten years in this and other counties?

A. Yes, sir.

Q. You knew as a matter of fact, that chickens out on farms in Henry County were worth many hundreds of thousands of dollars?

A. Well, I couldn't say; worth a good deal of money.

Q. What is the average chicken worth, Judge?

A. Well, I don't know.

Q. Well, it is worth, anyhow, sixty cents, isn't it?

A. Yes; worth more than that.

Q. At least worth sixty cents, isn't it?

A. Yes, sir; I think so.

Q. Now, Judge, there was also a kind of a flat rate on assessing cattle wasn't there?

A. No, sir.

Q. No flat rate on cattle at all?

A. No, set a place, we had to keep cattle to a certain standard.

Q. What was that standard?

A. That is, a certain average.

Q. What was the average?

A. I forget what the average was in 1926.

Q. Where was the set place you instructed the assessors?

A. To not let it get below that.

Q. Not to go below that?

A. Yes, sir.

Q. And you don't remember what that average was?

A. No, sir; I don't.

Q. Is there any way of getting at it?

A. I suppose the record.

Q. I wish you would get the record, it might need it?

A. All right.

[fol. 200] Q. What about horses; didn't you have a flat rate on horses?

A. I don't think there was any flat rate on them; they was the same way—horses had to be a certain price—not less than a certain price.

Q. Well, didn't you instruct the assessors to put horses in at that price?

A. They had to hold them at that price and above.

Q. You can get at what that price was, too, can't you?

A. I suppose I can.

Q. All right; now what about hogs?

A. Well I think hogs was assessed on the hundred.

Q. How much, do you remember?

A. No, I don't.

Q. That was a flat rate on a hundred pounds?

A. I think so.

Q. Did you know what hogs were worth on the 1st of June, 1926?

A. I think I knew at that time.

Q. The way you knew it was by looking at the market reports, wasn't it?

A. Yes.

Q. Find it in the Daily Drovers' Telegram?

A. Yes, sir.

Q. Have you got the price, per hundred pounds, that the assessors then put on hogs?

A. I don't know; I suppose I can.

Q. That was a flat rate on a hundred pounds. Now, Judge, on household furniture; of course, you know household furniture isn't assessed at a hundred cents on the dollar in this county, is it?

A. I think some is assessed at two hundred.

[fol. 201] Q. You say——

A. Yes, sir.

Q. Generally speaking—do you know that?

A. I don't generally speaking.

Q. Well, what do you think about the rest of it?

A. I don't know nothing about the rest of it.

Q. How do you happen to know about that?

A. Just happen to know about it in my neighborhood.

Q. You think your neighborhood assessed it at two hundred per cent?

A. No; but I think some are.

Q. Well, talking now, generally about the people in your neighborhood; it isn't assessed at over fifty per cent, and never has been in this county, has it?

A. I don't know; I believe it has.

Q. Would you say it is as much as seventy-five per cent?

A. Yes, sir.

Q. On the whole neighborhood?

A. Yes, sir; I think more than that.

Q. You think more than that?

A. Yes, sir; I do.

Q. Household furniture?

A. Yes, sir.

Q. Judge, would you say that you think cattle was assessed at one hundred cents on the dollars; would you say that your cattle was assessed the same as the stock you own in the First National Bank?

A. Well, yes, I think they are.

Q. You think they are; do you know what your assessment is?

A. Not on the cattle.

[fol. 202] Q. On your cattle?

A. No, I don't.

Q. How many cattle did you have on the 1st day of June, 1926?

A. That is another question I couldn't answer.

Q. Approximately, I don't mean exactly.

A. Well, might have had seventy-five; and might have had a hundred and fifty.

Q. Well, you think you had as many as seventy-five?

A. I expect I did; I don't know; I might not have had that many.

Q. What kind of cattle were they?

A. Well, I usually have all kinds; usually have all kinds.

Q. Now do you think you had any cattle worth as little as $26.34 a head on the 1st of June, 1926?

A. Yes, sir.

Q. What kind were they?

A. Would be yearlings, something light.

Q. Was that the kind you had mostly?

A. I couldn't say; generally had a few of that kind.

Q. Have you got some worth more?

A. I expect I did; probably some not worth that much.

Q. About what would your yearlings weigh?

A. I couldn't tell you.
Q. On June 1st, 1926?
A. I don't know.
Q. Oh, about?
A. Really I don't know that I had any yearlings; I couldn't tell you.
Q. And you think you had some that weren't worth as much as $26.24 apiece; I thought they were yearlings?
A. Well, probably were; most every year I have that sort of cattle.
[fol. 203] Q. You knew that yearlings were selling at at least nine dollars a hundred, on the 1st of June, 1926?
A. No, sir.
Q. Didn't know that?
A. I knew at the time, I guess.
Q. I am asking you to refresh your memory and tell the court if yearlings weren't selling at nine dollars a hundred on the 1st of June, 1926?
A. I expect that was a better class of yearlings than I had.

By Mr. Wesner: Renew the objections to this testimony as to prices as originally made, and to the witness quoting now from the paper.

Overruled.

By Witness: Those are fat yearlings you have there.

Q. I know, but what you had?
A. Well, have to look at the stockers.
Q. They weren't canners, were they?
A. I guess if they had been cows, they would have been canners.
Q. If they had been cows, they would have been canners?
A. Yes, sir.
Q. All right—what were canners worth there at that time?
A. Well, common cows, cutters?
Q. Yes?
A. The best here, $4.50.
Q. What would your yearlings weigh?
A. Oh, I don't know, usually a fine yearling will weigh from five to six hundred, on the market.
Q. From five to six hundred?

A. Might weigh that.

[fol. 204] Q. You don't remember that you had that kind of yearlings on your farm, do you?

A. Yes, I very nearly always have them.

Q. On the 1st of June?

A. Yes, sir.

Q. Well, how many good cattle did you have?

A. I couldn't tell you.

Q. Did you have 25 head?

A. I couldn't say; might not have had over fifty head of cattle; haven't got the least recollection how many I had.

Q. Supose you had fifty down there, you wouldn't be able then to tell how many of these emaciated yearlings you had?

A. No; I didn't keep track of them.

Q. You don't know about that?

A. No, sir; don't know about that.

By Mr. Rucker: I don't think that is competent, anyhow.

By the Court: I don't think you understood him as to the number.

By Mr. Rucker: No; he can't remember whether he had any good cattle, or not.

A. Well, now, just a few; for I never did——

Q. Do you think you could say fifty?

A. No, sir.

Q. What about hogs—I believe I asked you about hogs, and you were going to get the figures for me, weren't you?

A. Yes, sir.

Q. All right; that's all.

Redirect examination:

Q. Judge, would the prices quoted in the Drovers' Telegram be a proper criterion for an assessor to use, going out [fol. 205] and assessing cattle in Henry County?

A. I think not; no, sir.

Q. As a matter of fact, isn't the price of cattle subject to fluctuation on the market, up and down?

A. They certainly are; yes, sir.

Q. As a matter of fact, Judge, isn't used and worn household and kitchen furniture——

By Mr. Rucker: Object to any further cross examination of this witness by defendant's counsel; he is his witness, not ours.

By Mr. Calvird: I am entitled to show, if Your Honor please, by this witness, that used, second-hand household and kitchen furniture had little or no market value whatever; it isn't worth much; couldn't sell it for anything if you had to dispose of it, and have to lump it in to a second hand dealer for nothing; it's the common knowledge of everybody.

By the Court: Well, we all know about that; well, if he knows about that, I will let him testify—what was the question?

To which ruling the plaintiff then and there excepted; and now excepts.

Question read.

Q. Has used second-hand and household and kitchen furniture any substantial value on the market, Judge?

A. No, sir; I think not.

Q. Now, Mr. Rucker, in cross examining you, used the term, flat rate; tell His Honor whether or not there was any figure given the assessors at which they were to go out [fol. 206] and assess any hogs?

A. No, sir; there wasn't.

Q. Or cattle, or sheep?

A. No, sir.

Q. Or any other property?

A. No, sir.

Q. They were to assess them at their actual value?

A. Yes, sir; the actual value.

Q. And keep them up to a certain standard?

A. Yes, sir; that's the way.

Recross-examination:

Q. Judge, didn't you just get through telling that you had a flat rate on the hundred pounds on hogs?

A. I think they did assess the hogs at so much a hundred.

Q. That's what I understood you to say?

A. And the rest of it was at——

Q. Yes, I understood you to say that?

A. I could be mistaken about that.
Q. I know you could?

By Mr. Calvird: You mean they just lumped the hogs in at so much?

A. No; so much a hundred pounds.
Q. You mean, not to go above or below?
A. No, if you had a bunch of hogs that weighed 150 pounds, they assessed them at 150 pounds, as 150 pound hogs.

By Mr. Rucker: At this price on a hundred pounds?

A. Yes.
Q. If these men assess a hog, 150 pounds, that hog would be assessed at fifty dollars?
A. Yes, sir; I could be mistaken.
[fol. 207] Q. Now you say you went over these figures as a member of the board of equalization, to get the full and true values of the property; how did you undertake to determine what real estate was worth, and to get the true value?

By Mr. Wesner: I object to that as immaterial and irrelevant; as to how they attempted to arrive at the value.
By Mr. Calvird: On the particular real estate in Henry County—it would mean going into evidence on every piece of real estate in Henry County.
By the Court: I don't believe that there has been any detailed statement as to how the other values were arrived at, as to how the other fellows did arrive at that, but there was evidence as to the comparative values—in regard to what the comparative values of the considerations and the assessed values was, based on that; you didn't have any evidence of what the property was sold for?
By Mr. Rucker: Yes, evidence that they took the sales value of every piece of property sold in this county for a year.
By Mr. Calvird: Not what it sold for, but the considerations in the deeds.
By Mr. Rucker: Well, the Supreme Court of Missouri says that prima facie the consideration——
By the Court: Yes; that was the only definite method I remember being detailed.

[fol. 208] By Mr. Rucker: I am just asking him how they fixed it at a hundred cents; can't we ask him how he arrived at that?

By the Court: If he is able to state, he can state.

Q. How did you arrive at it?

A. Just at our own judgment.

Q. You didn't consult the records at all, to see about the sales?

A. No, sir.

Q. You didn't have any testimony on what property had sold for in the various communities?

A. No, sir; didn't.

By Mr. Conrad: I object to that line of questioning, because the value in money of anything depends upon what it costs—what it could be sold for, and what it is worth to hold it as an investment; a man on the county court uses his common ordinary judgment and hard horse sense, and his knowledge of values in general in arriving at that—and to arrive at those figures, to the best of his ability.

By Mr. Wesner: Object for the further reason that the values therein, as to those values considered by the county court, the Board of Equalization, are immaterial values so far as the issues in this case are concerned, because they are fixed by the parties owning and controlling, and either holding it for sale, or holding such property as an investment, or for some other personal reason, or the parties who are [fol. 209] purchasers, or sticklers as to the title of the property, with some particular object or desire of owning that property; which values are not any evidence of the true value in money or exchange of property, or any piece or parcel thereof, for the purpose of taxation or for any other purpose; and that such evidence and such values cannot here and now be introduced in this case to controvert the values fixed and found by the taxing authorities of Clinton Township of Henry County, Missouri, or the State of Missouri; for the values fixed by them for the purpose of taxation; that such values are immaterial and irrelevant, and that such testimony is improper.

By the Court: Objection overruled. If the presiding judge—if they discussed those things in the presence of that court; as to how they arrived at the true value, of all

of the various properties, real and personal, why he can state.

By Mr. Rucker: He says they just used their best judgment, and made no investigation of any kind.

By the Court: He stated he was a farmer, owns a farm, has stock, that he is acquainted with the values, over in the immediate neighborhood, at least; being the county judge, if he has information, and stated it to the Board of Equalization, and discussed it with them, he ought to have pretty fair judgment as to the value of property throughout the county.

By Mr. Montgomery: Can't we show that the Board that [fol. 210] did that, doesn't consult the available sources of information of that sort, as to the sales; doesn't do its duty?

By Mr. Calvird: We object to them going out into specific property picking out some one tract of land of all the land in Henry County, and showing then that that land sold for more than it was assessed at; because we assess each and every piece of property real and personal in Henry County.

By Mr. Montgomery: Haven't we got a right to show that; show it from things that they had pending?

By the Court: How many instances of that kind do you want to show?

By Mr. Montgomery: I don't know.

By Mr. Rucker: We have a hundred, I think.

By Mr. Conrad: Another objection; that in cross examining a county judge or a member of the Board of Equalization, who has already stated that they used their best judgment, and then they seek to arrive at the elements on which that judgment is based; the court will take judicial notice, that a man of good judgment, such as serves on county courts and Boards of Equalization and assessors, often arrive at these conclusions by process of intuition; they may often not be able to state how they arrive at those conclusions, like a judge on the bench would; a judge on the bench would state how he arrives at a certain conclusion; an assessor, county judge or member of a Board of Equaliza- [fol. 211] tion, using the faculty of ordinary people, which is intuition, and usually surprisingly accurate, couldn't always tell the steps by which he arrived at that conclusion; therefore I object to the witness being cross examined as to how he arrived at those conclusions. He said that is my

best judgment; now that implies a great many things which probably the witness couldn't give; yet when he says they used their best judgment, knowing him to be an honest man, we don't think he ought to be cross examined as to how he arrived at the judgment.

By Mr. Wesner: I renew objection to the valuation fixed and found by the county court or the Board of Equalization by the Assessor of Clinton Township and the State Board of Equalization, are the final valuation and assessment on all classes of real and personal property in Henry County, fixed by them at so much, and it is their duty under the law so to do, and that they are judgments within themselves, and not subject at this time to collateral attack, or subject to such investigation or to such controverting testimony as the plaintiff in this case now offers Your Honor to be heard.

By the Court: Well, I still think that as he is a member of the Board of Equalization, and as this may tend to establish discrimination by the Board of Equalization—I don't see how it could, very well, but I know their object is to show that there was an inequitable adjustment of the values of properties, and if he has any—if he can collect any spe-[fol. 212] cific—if he can give any information that he had, upon which he based his conclusions as a judge and a member of the Board of Equalization, I think he can state it; if he doesn't remember what was considered, he can say so.

By the Witness: How was the question?

Q. Well, Judge—I beg pardon——

By the Court: The question was——

(Question read by stenographer.)

Already answered by witness.

By Mr. Rucker: Strike that question out—I will get at it this way.

By the Court: Proceed.

Q. Do you know the laundry property in Clinton?

By Mr. Wesner: We object to that.

By the Court: He can answer that.

Q. Do you know the laundry building—the J. F. Hall property?

A. I have saw it, yes, sir; I never was in the building in my life.

Q. Now, don't answer until the gentlemen have an opportunity to object—don't you know that that property, which sold on March 19th, 1926, for fifteen thousand dollars, was assessed by your Board of Equalization at $5,180, or about 33⅓% of the sale value?

By Mr. Calvird: Renew objection, and here object to their taking up specific instances of property, and asking whether or not they sold for more or less than they were as-[fol. 213] sessed at, for the reason that it opens up every piece of real estate, and every item of personal property in Henry County.

By the Court: It would be impossible——

By Mr. Calvird: It would be impossible to go into that, and, furthermore for the reason, that what a piece of property may have sold for is no more evidence that that was its actual or market value than it is that bank stock, that sold for twice what it was assessed at, and that Your Honor refused to let us show that bank stock was held by the owners here at twice what it was assessed at.

By Mr. Wesner: Interpose the further objection that this consideration, could it have been for an actual consideration, is no evidence of the true value in money of the piece of property spoken of, or any other piece of property in Clinton Township or in Henry County, Missouri; because the purchaser of that property may have given far too much, in excess of its true value in money in the purchase price for it; I want to renew my objection made first to the introduction of testimony for the purpose of questioning the values fixed by the township assessor and the Board of Equalization and the State Board of Equalization; there is a further specific objection at this time, that this is an endeavor on the part of the plaintiff to prove—to try to prove, systematic, deliberate, intentional and arbitrary discrimination and fraud against plaintiff in this case, without the showing or establishing of any deliberation or of any [fol. 214] intention or of any system so to do, by picking out a few specific instances, and taking into consideration only a very limited proposition and consideration upon the subject; and that it is an attempt to prove the acts, without proving the deliberately, or intentionally, or systemati-

cally or arbitrarily, discriminatory acts, or the attempt or desire to do so.

By Mr. Calvird: We object, because what would it show, the offer of evidence that that property sold for a certain sum of money? It means that we have got to find out from the witnesses whether that was paid in money, whether it was paid in other property that was put in at an inflated price, inflated value, etc. It opens up all those questions, and the calling of innumerable witnesses, and it opens up every piece of property in Henry County.

By the Court: Gentlemen, you have to show a state of facts that the court can find—from which the court can find that discrimination has been practiced, that a discrimination has been made in the valuation, and in fixing the value of certain property, and it has got to appear, not with respect to certain specific property, but it has got to be systematic, intentional and unlawful for taxation purposes; now that, I think, is your petition——

By Mr. Rucker: Yes, sir; that's our petition.

By the Court. Now, does this tend to show that?

[fol. 215] By Mr. Rucker: Let me make the record, maybe you will see the bearing—we offer to show that the records in the Recorder's Office in Henry County, Missouri, disclose that 55 pieces of property were sold in the Town of Clinton, Missouri, during or prior—during the year prior to June 1st, 1926——

By Mr. Montgomery: No, during the year prior to April, 1927, when this Board met.

By Mr. Rucker: All right. During the year prior to April, 1927, that the Board of Equalization met—and that the records in the recorder's office of the transfers, disclose that the recited consideration for the various pieces of property exceeded the assessed valuation of the various pieces of property by from twenty-five to seventy-five per cent.

By Mr. Wesner: We renew all of our objections originally made to the introduction of this testimony of value for the reasons originally stated; and lastly as to the introduction of the testimony as to the laundry mentioned by the attorney for plaintiff, and for the additional and further reason that the—that, if evidence at all—that the records of the recorder's office would be the best evidence; and for

the further and additional reason that it is all immaterial and irrelevant.

By Mr. Conrad: For the further reason that it is a matter of common knowledge that since the removal of revenue stamps from deeds, it is a common practice for purchasers [fol. 216] of property to request that the consideration of a deed be written at a larger than the actual amount.

By Mr. Wesner: And the further and additional reason that in all of the values named in any of the deeds, unless of the date of June 1st, and even then it should not be considered as evidence of the value, would be no evidence as to the value as of that date for any purpose, let alone for the purposes of assessment.

By the Court: How do you propose to show that?

By Mr. Rucker: I can show it by bringing the books; we will lay the foundation for it now; and if they want the books, we will bring the books.

By Mr. Rucker: If the gentlemen would make that objection to a certain line of testimony, it would save a great deal of time.

By the Court: Yes, it takes up an awful lot of time of the court to have to go over the ground on every question, when you have already covered it in former objections. Make any other objection now that you can think of that you want to go into the record.

By Mr. Wesner: We want to be understood that all the objections we make, stand for every point, to every question, and that our exceptions are saved.

By Mr. Rucker: Yes; that's my understanding.

[fol. 217] Q. Now, Judge, did you, as a matter of fact, examine any of the transfer records in the recorder's office in Henry County, Missouri for the purpose of aiding you in determining what the true value of the real estate in certain sections of the county might be?

A. I didn't.

Q. Did you even examine the deed of trust record book?

A. No, sir.

Q. You know, as a matter of fact, don't you, that ordinarily no loan company will lend to exceed fifty per cent of the value of real property; that's the general rule, isn't it?

A. Really, I don't know much about the loan business.

Q. You don't; didn't you ever borrow?

A. Yes, sir; but I never had to *a* give a mortgage.

Q. Now, going back to your assessment list, I want to refresh your memory and ask you if you didn't have seven pure bred cattle the first of June, 1926; didn't you have more than seven pure bred cattle?

A. I don't remember; sometimes I have some; sometimes I don't.

Q. Look at that list; is this your stock (showing witness)?

A. That's it.

Q. Now, this list was true, wasn't it?

A. I think it was.

Q. Well, don't you know that it was?

A. Yes, sir.

Q. You see, seven pure bred cattle there, don't you?

A. It looks like it.

Q. And forty two grade cattle, three years old and over?

A. Yes, sir.

[fol. 218] Q. And you had 42 grade cattle under three years, didn't you?

A. Yes, sir.

Q. And you had 19 pure bred hogs?

A. Yes, sir.

Q. And you had 85 other hogs?

A. Yes, sir.

Q. Now, since your memory has been refreshed—what kind of cattle were the pure breeds?

A. Shorthorn.

Q. Were they worth as much as $30.00 a head?

A. Well, I would have hated to have had to have taken that for them.

Q. Well, would you have taken ninety dollars a head for them?

A. Yes, sir.

Q. What did you consider them worth?

A. Well, I don't know, they were just——

Q. Just pure bred Shorthorns?

A. I only had one valuable animal.

Q. Kept something fancy?

A. No, wasn't fancy; just kept him; he belonged to me.

Q. Belonged to you?

A. Yes, sir.

Q. And all these pure breeds here?

A. I don't remember—didn't remember about having them.

Q. You remember it now, don't you?

A. I don't remember the cattle; know I had cattle, several head; this statement was all right.

Q. These 42 grade cattle three years old and over; they weren't those razor-backed yearlings you told about, were they?

A. No, they were better cattle.

[fol. 219] Q. Better cattle?

A. Yes, sir.

Q. You remember them now, do you?

A. Why, that's what I had; I know by that.

Q. About what do you think they would weigh?

A. I declare, I don't know.

Q. Would they weigh five hundred pounds?

A. Yes; they would beat that.

Q. Well, you think they would beat eight hundred?

A. I think they would.

Q. Around eight hundred?

A. Yes.

Q. You think all the grade cattle you had then would weigh around 800?

A. Well, the three year olds.

Q. What would the ones under three years weigh?

A. Well, I don't remember; might weigh 500; I couldn't say.

Q. Well, they would weigh at least 500?

A. I suppose they would.

Q. All the grade cattle?

A. The three year cattle.

Q. They weren't scrubs, were they?

A. Well, six head that I bought was scrubs.

Q. You filled out the assessment on these cattle at about what the neighbors were paying?

A. Told the assessor to put it like the neighbors.

Q. Then he was putting everybody's list alike in your township; that's what you told him to do, and in fact what he did?

A. I suppose what he did.

[fol. 220] Q. You knew, from looking it over after he had finished it up?

A. Yes, sir.

Q. You examined the assessment list?

A. Yes, sir.

Q. And from that examination of the assessment list, you knew that you paid just as much taxes as any of the neighbors, didn't you?

A. Yes, sir; I would.

Q. Now the proportion would be kept?

A. I suppose so.

Q. In other words, you paid as much per head on your cattle as all paid didn't you?

A. Well, the same per pound.

Q. Did he assess cattle by the pound?

A. No, but if cattle weighed a thousand pounds, they would be assessed higher than less heavy cattle.

Q. And so everybody was assessed at a flat rate; if they all weighed exactly the same? Your forty-one cattle were assessed, if they weighed the same; on a flat rate?

A. No, they're not; couldn't you average them?

Q. Yes; you could average them—you had four mules down there, didn't you?

A. I didn't look at it, I don't remember; I expect I did.

Q. As a matter of fact, you had six mules, didn't you?

A. I might have had them.

Q. Work mules?

A. Might be.

Q. You had six here, according to the list?

A. Yes, sir.

[fol. 221] Q. What were they worth?

A. What were they worth?

Q. Approximately?

A. I don't remember what mules were selling for.

Q. Well, you must have some recollection about the—your own property—what they brought there?

A. Well, I couldn't say.

Q. A good mule would sell for sixty dollars, would it?

A. I expect it would.

Q. There were?

A. I judge so.

Q. As a matter of fact, you know they would sell for over a hundred, a good mule?

A. Well, he might.

Q. Well, weren't they doing that?

A. I couldn't say.

Q. You knew they were selling for as much as a hundred, didn't you?

A. I think they were.

Q. Well, your six mules were put in at thirty dollars apiece; you weren't paying less per head for your good mules than your neighbors, were you?

A. Well, I suppose not.

Q. Well, don't you know you weren't?

A. I guess I wasn't.

Q. Your neighbors were paying thirty dollars a head for good mules, too, weren't they?

A. I suppose so.

Q. That was the general assessment you put on good mules down there in that section; thirty dollars a head?

A. Well, I suppose that it was.

[fol. 222] Q. The four mules on here were assessed for—I want to correct what I said awhile ago; that a mule was assessed at sixty dollars a head——

A. I thought you were wrong.

Q. Sixty dollars a head, I said thirty, I meant sixty dollars a head?

A. Yes, sir; that sounds better.

Q. Is it about what you were assessing a hundred dollar mules for—wasn't it?

A. I don't imagine it was a hundred dollar mules; I don't know what it was.

Q. A man is bound to know something about what his mules are worth, isn't he?

A. I sure did.

Q. And this hasn't been ten years ago?

A. No; but I don't know nothing about the mule market that year; I have forgotten.

Q. All right; how do you find out?

A. The Drovers' Telegram.

Q. All right; here is the Drovers' Telegram right here; they don't carry the mule market, all of it, in the Drovers' Telegram, do they?

A. I don't think so, no.

Q. Here's a Drovers' Telegram, May 26th, 1926; as close to the 1st of June as we could find a quotation on mules—just four days before; look in there, please, and see if it tells something about what your mules were worth?

A. I don't know——

Q. I will show you where the quotation is—on page 4, I think—right here (indicating) horses and mules, there you [fol. 223] are (indicating)?

A. Well, this shows mules $125 to $175.

Q. So, now, after refreshing your memory, wouldn't you say that a good mule was worth at least a hundred dollars, on the first of June?

A. Well, it would be owing to the condition he was in.

Q. Judge, you know what I mean?

A. These mules were fat.

Q. Weren't yours good work mules?

A. Yes, sir; fair workers, I suppose.

By the Court: I think you will agree that those mules quoted there are mules for the market.

By Mr. Rucker: The quotation shows from $125 to $175; I am knocking off $25 Your Honor, from the lowest price; I'm not asking about the highest; not saying these mules were worth $150 apiece.

By the Court: Does that say good mules?

By Mr. Rucker: It says good mules.

By the Court: Then your assessment list says that?

By Witness: Yes, sir; says good mules; but it costs something to get mules to market.

Q. I understand that; but, of course, there's a pretty good local market for mules during the working season, isn't it?

A. Yes—the 1st of June is a little late.

Q. You don't want to sell them either during the growing crop season?

A. No, sir.

[fol. 224] Q. Now, Judge, the four mules not so good, were put at fifty dollars a head?

A. They were all working mules?

Q. Well, you have two good mules, and four of the other kind, makes six mules; and they were put in at fifty, instead of sixty dollars?

A. Were they work mules?

Q. I presume so; it doesn't say?

A. I expect they were; well, I usually have a small team, or two.

Q. Then you had two—horses or mares, I don't know which, at what value?

A. Old horses.

Q. The old horses?

A. Yes.

Q. They were only assessed at thirty dollars apiece?

A. I couldn't have gotten fifteen dollars apiece for them; expect ten dollars would catch both.

Q. But you were assessing horses at thirty dollars, therefore you put those in at thirty dollars; that's the way it was done?

A. Yes.

Q. All right; you didn't have any farm machinery, did you?

A. I ought to have had some.

Q. You did, too, didn't you?

A. I had a few.

Q. Do you know what the value of it is?

A. Well, sir, it's about as cheap as I could farm with; I don't know what it says on there.

Q. Have a tractor?

A. No, sir.

Q. Any gang plows?

A. No, sir.

[fol. 225] Q. Any disc cultivators?

A. Got one disc cultivator—old one.

Q. Did you have any drill of any kind?

A. No; didn't have any drill.

Q. Got any plows?

A. I had a corn planter with a drill attached to it.

Q. What are corn planters worth now?

A. They wasn't worth much, been run in stumps a good deal, sprung out of shape.

Q. Well, did you have any harness?

A. A few old harness.

Q. Did you have any harrows?

A. An old harrow.

Q. Have a roller?

A. No, sir.
Q. How many plows did you have?
A. I have had two breaking plows. I think I had two.
Q. How many acres of land do you farm?
A. Usually a hundred.
Q. About a hundred acres?
A. Yes.
Q. And you think a hundred and fifty dollars is a fair valuation of your farming machinery?
A. I think it's about all I could get for it.
Q. Don't think you could have got that for it?
A. No, sir; I don't, if I had to sell it at public sale.
Q. You own 610 acres of land, don't you?
A. A little more than that, I think.

(Witness excused.)

[fol. 226] Judge FRANK RAGLAND, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. State your name?
A. Frank Ragland.
Q. What is your occupation?
A. Farmer.
Q. How long have you been a farmer?
A. Well, I was born and raised on a farm.
Q. How long have you lived in Henry County?
A. About fifty-five years.
Q. What part of the county do you live in?
A. Live in Bear Creek township—southwest part—south part.
Q. What official position do you hold in the county?
A. I am a member of the county court.
Q. How long have you been a member of the county court?
A. A little more than two years.
Q. This is your second term?
A. Second term, yes, sir.
Q. Tell His Honor, Judge Ragland, what directions you, as a member of the court—or the court, as a body, gave to the assessors of Henry County, relative to the assessment of all property in the county?

A. Well, we told them to go and assess everything at its true value—cash value.

Q. As member of the county court, you were also a member of the Board of Equalization?

A. Yes, sir.

Q. Judge, was it your purpose, as a member of the Board of Equalization, and of your body, and to the best of your ability did you equalize property in the county at [fol. 227] its true value?

A. We did.

Q. In money——

A. Yes.

Cross-examination:

Q. You know that you didn't assess sucking animals, didn't you?

A. No, I don't think they did.

Q. They weren't assessed?

A. I don't think so.

Q. Chickens weren't assessed, were they?

A. No, I think not.

Q. Also your direction to the assessor, was to assess sheep at five dollars a head, wasn't it?

A. Sheep at five dollars a head?

Q. Yes, sir.

A. No, told them to go and assess them at what they were worth?

Q. Don't you have instructions from the state board, now, about how to assess these things?

A. Well, I don't know whether we did, or not; might be we did; I don't remember whether we had instructions or not.

Q. Won't say you didn't?

A. No, won't say we didn't have.

Q. Now, as a matter of fact, you assessed horses and mares, three years old and over, in at thirty dollars a head, didn't you; you told them to do that, didn't you?

A. Yes, sir.

Q. How about telling them to assess in mules at fifty dollars a head—you told them to assess common mules at fifty [fol. 223] dollars a head, didn't you?

A. Yes, I think we did.

Q. And you assess grade cattle, three years old and over, at thirty dollars a head, didn't you?

A. Yes.

Q. Yes, sir; and that is what yours were assessed at, weren't they?

A. I expect: I don't know—didn't have very many.

Q. Look at that list, see whether that is what they were assessed (showing assessment list to witness)?

A. I can't see it, without glasses.

Q. That's what they are—here is two horses, $60, six mules, 25 cattle——

A. Well, let me see——

Q. And, of course, Judge, you didn't pay any less on your stock than your neighbors paid, did you?

A. I don't think I did.

Q. You wouldn't have done that?

A. No.

Q. You wouldn't have permitted the assessor to assess your property at any less than he assessed your neighbors, on the same kind, would you?

A. No, I supposed it was all assessed alike.

Q. Everybody in your neighborhood were assessed alike, weren't they?

A. Yes, sir.

That's all, Judge.

Redirect examination:

By the Court: What item, if any, do you think was assessed for more than it — worth?

A. I expect that my team was assessed for probably more than I could sell them for.

[fol. 229] By Mr. Rucker: You state that the two horses at $30 apiece was more than they were worth?

A. Yes.

Q. But you don't say that the two mules, at fifty dollars apiece, was more than they were worth?

A. No.

By Mr. Calvird:

Q. Did I understand you to say that the assessors were directed to go out and assess these animals at a certain

sum; was that a fixed rate for all, or was that basis, they were to be valued more if they were worth more, and less, if worth less?

By Mr. Rucker: Object to his cross examining the witness.

By Mr. Calvird: He has a right to explain what he meant.

By Mr. Rucker: His testimony was perfectly plain; nothing ambiguous about it.

By the Court: I think not—still, we are pretty liberal here, Mr. Rucker, whether that is just a proper question or not——

By Mr. Calvird: We want to find out whether that was the standard is all.

By the Court: Whether they were instructed not to deviate from it.

By Mr. Calvird: And whether they were instructed not to deviate from it, to fix it at that, or whether, if it was of more value, they were to put it higher, or if of less value than that, they were to put it at its actual worth.

[fol. 230] By the Court: I believe I will admit that; because he is testifying about his own matter, and about his neighbors.

To which ruling the plaintiff then and there excepted; and now excepts.

Q. Were those figures intended to be set for the various animals, or just mere suggestions, that they could go above, if they were of more value?

A. I mean to say we told them to assess them for what they were worth.

Q. That was a mere suggestion then, as to what to put on the grade?

By Mr. Rucker: Object to him cross examining his witness, leading and directing and suggesting the answer.

By the Court: The Court wants to know: He says that this was a rule, but where they were worth a greater amount than that, that they must assess them at their true value?

By Witness: Yes, sir, at their true value.

Q. That's all, Judge.

(Witness excused.)

Judge L. L. KINYON, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. Judge, please talk so the stenographer can hear you; state your name.

A. L. L. Kinyon.

Q. You live in Henry County?

A. Yes, sir.

Q. How long have you lived in Henry County?

A. I came to Henry County in '82.

[fol. 231] Q. What is your business?

A. Farmer.

Q. How long have you been farming?

A. All my life.

Q. And where is your farm—where do you live?

A. In Bear Creek township.

Q. That is in which direction from the county seat?

A. Northeast.

Q. Judge, what official position did you hold in Henry County in 1926 and 1927?

A. In 1927 and 1928, I was associate judge.

Q. You were a member of the county court?

A. Yes, sir.

Q. As a member of the county court, tell His Honor what directions were given by your body to the assessors, when they went out to assess the property in the county?

A. We told them to take everything full value—a hundred per cent; I think on most everything we made a flat rate that they couldn't go below; but to go the full value, it made no difference how high.

Q. If it was worth more than the rate, then to give the true value?

A. Yes, sir.

By Mr. Rucker: Object; leading and suggestive.

By the Court: He had answered that, anyway; he just repeated it.

By Mr. Rucker: Well; go ahead.

Q. You also, as a member of the county court, you were a member of the Board of Equalization?

A. Yes, sir.

[fol. 232] Q. Judge, was it the purpose of your body, and did you, to the best of your ability, equalize the property of the county, at its true value in money?

Objected to as leading and suggestive.

A. Shall I answer that in my own way?

Q. Yes; answer it in your own way.

A. In Henry County we have township organization; there are 19 townships, and nineteen assessors, they are elected by people of their own township, they all get good men and men who understands the value of property, and they assessed this amount, and when the Equalization Board met, we took every township, and the assessor in that township was with us, to go over this land and other property; and that's the way we adjusted it; they knowed this property and we didn't know all of it.

Q. And your board equalized it—in doing that, Judge, what value did you try to arrive at, to the best of your judgment?

A. A hundred per cent.

Cross-examination.

By Mr. Rucker:

Q. You had fifteen sheep, didn't you, that year?

A. I had some, I don't know; it might have been fifteen.

Q. Well, you knew that they didn't assess sucking animals, didn't you?

A. Certainly.

Q. They didn't do that?

A. No, sir.

[fol. 233] Q. They didn't assess chickens, did they?

A. Is there any law for that?

Q. Is there, or not—don't argue—did they assess chickens?

A. No, sir.

Q. You knew they didn't assess chickens: now you had fifteen sheep down there, according to your return?

A. Yes, sir.

Q. And they were assessed at four dollars a head on the 1st day of June: now you knew they were worth a good deal more than $4.00 a head on the 1st of June?

A. No, don't know what they were worth right at the 1st day of June.

Q. Were they ewes and lambs, most of them?

A. Yes, sir.

Q. The lambs worth more than the ewes?

A. Lambs weren't assessed.

Q. They were actually worth more than the ewes, weren't they?

A. Yes, sir.

Q. The ewes were assessed at four dollars a head, weren't they: you knew that?

A. No; don't believe I knew it at the time.

Q. Your ewes were assessed at exactly the same price as were all of your neighbor's and friend's, weren't they?

A. What year was that in?

Q. 1926—June 1st, 1926?

A. Yes; they were in 1926.

Q. Your neighbors and friends were all assessed, on your pure bred sheep, common sheep, all sheep, at four dollars a head; you knew that?

[fol. 234] A. No; didn't know that they were assessed four dollars a head.

Q. Didn't your examination as a member of the Board of Equalization show up these things?

A. We didn't go over the personal property.

Q. Didn't go over the personal property: personal and real are right here on the same sheet, aren't they?

A. We didn't go over that list.

Q. You didn't go over the list at all, did you?

A. No; taken the book.

Q. Well, couldn't you tell from the books of the collector as a matter of fact that sheep were assessed at four dollars a head in your township?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. You were a member of the board?

A. Yes, sir.

Q. You equalized for yourselves, didn't pay any attention to your neighbors?

A. Well, if they were all assessed, they paid what I did.

Q. Yes, sir—just exactly that; you paid just what your neighbors paid?

A. I don't know what they paid; if they were paying, that's what I paid.

Q. Didn't you ever familiarize yourself enough with the assessed valuation, to know you were paying as much on your personal property as your neighbors?

By Mr. Wesner: Object to that; the witness answered the question.

By the Court: The witness says he don't know now, but if that was true then he did know it.

[fol. 235] Q. You knew it then?

A. I knew then.

Q. That's all right, I didn't understand you: now, looking at your list, you can see that you had 15 sheep there, assessed at sixty dollars?

A. Yes, sir.

Q. And that was the general rate of assessment of sheep, except pure bred sheep, in your township, wasn't it: and you remember it now, since you looked at the list?

By Mr. Calvird: I object to that; going over all the sheep in the township; it doesn't have anything to do with the instructions to the assessors in the 1926 assessment.

Q. Now you had four mules down there—No. 5?

A. Yes, sir.

Q. What kind of mules were they?

A. Young mules.

Q. You mean yearlings?

A. Two year old.

Q. Work mules, were they?

A. No.

Q. Not old enough to work?

A. They might have been; well, I wouldn't work two year olds.

Q. What are they worth?

A. The first of June?

Q. Yes?

A. Well, I don't know, but then, after the first day of June, you work them down pretty thin, and the hair looks bad, you are pretty lucky to get fifty on them.

Q. In other words, you think, the first day of June, the list was high, on the values of property?

A. That's what they were assessed on.

[fol. 236] Q. You think they were worth at least fifty dollars a head?

A. No, sir.

Q. Don't think they were worth that much?

A. No, sir.

Q. They were pretty common, weren't they?

A. You take a little two year old mule, and work them down, and most of them looks pretty common.

Q. Did you have any horses or mares at all down there?

A. Yes, sir.

Q. Mares?

A. Yes, sir.

Q. Five mares?

A. I don't know; whatever it is there.

Q. You don't know; you can't tell whether you had five; haven't you got the same stock you had then—horses and mares?

A. No, sir.

Q. When did you sell them?

By Mr. Wesner: Object to that; immaterial.

Q. Refresh your memory, and see what you had then?

By the Court: I don't think, Mr. Rucker, a witness can remember all the property—a farmer, that has so many things.

By Mr. Rucker: I thought it might help him to remember; this is cross examination.

By the Court: Yes; proceed.

Q. How many of them do you still have on your land—horses and mares?

By Mr. Wesner: I object to that as immaterial and irrelevant.

[fol. 237] By the Court: If you remember how many you have of those same horses?

A. I don't.

Q. You don't remember anything about it?

A. No, sir.
Q. Well, that's all.

(Witness excused.)

Mr. M. M. Hill, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. State your name?
A. M. M. Hill.
Q. Where do you live?
A. Clinton.
Q. How long have you lived here?
A. I think about ten or twelve years; not sure.
Q. And prior to that time you lived where?
A. At Lewis Station two years; and before that at Lessville.
Q. All in Henry County?
A. Yes, sir.
Q. What official position do you now hold in Henry County?
A. Township clerk and assessor.
Q. Of what township?
A. Clinton Township.
Q. How long have you been in that position?
A. Six years; this April.
Q. And by reason of your position, what duties devolve upon you?
A. To fix the assessment of the township, and keep the record of the proceedings of the township board.
[fol. 238] Q. Did you make the assessment for Clinton Township in 1926?
A. I did.
Q. How did you assess the property of Clinton Township?
A. As near a hundred per cent as I knew how.
Q. You used your best judgment, did you, as to values?
A. Yes, sir.
Q. In arriving at what the property was worth in money?
A. Yes, sir, I did.
Q. Now, in assessing, Mr. Hill; what was your method of assessment?

By Mr. Rucker: The witness just answered; said as near a hundred cents as he could.

Q. I don't mean what values you put; I mean, how did you go about it; what did you do?

A. Well, we had a schedule already drawed to follow.

Q. What do you mean by that?

A. Well, that horses should be an average of so much, and cattle the same.

Q. Do you mean by that that you put them in at that same one price?

A. We tried to make an average by that of an average cow and an average horse.

Q. If they were worth more than an average——

A. If they were worth more, they were assessed more.

Q. Sir?

A. If they were worth more, they were assessed more, I say; and if they weren't worth so much, there would be a less value put on them.

[fol. 239] Q. Now how did you—generally did you view the property—did you go to see it?

A. Go out and look at it?

Q. Yes.

A. No, can't say that we would go out and take an inventory of it, or anything like that.

Q. You are familiar with——

By Mr. Rucker: I submit he is leading; he has answered; he knows his duties, ought not to have to lead him.

Q. Did you go alone, or with somebody?

A. I went alone; I went alone in the township; but in town I had the city assessor with me, Mr. Whittaker; he was with me one or two years, and Mr. Fred Stotts has been with me, and one year Mr. Baker, Tillman Baker.

Q. And the lists are given to the owners of the property, are they to fill out?

A. Yes; or we fill them out for them; or leave the list for them to fill out.

Q. And then they sign the list?

A. Sign it and return it.

Q. Were these lists signed under oath?

A. Why, we left the list; I don't know whether they were, or not.

Cross-examination.

By Mr. Rucker:

Q. They just fill the list in and sign it, that's what they did, didn't they ?

A. I couldn't tell you; they were signed.

Q. Sent to you?

A. Sent to me.

[fol. 240] Q. I say, you didn't witness it?

A. I don't know whether they signed it under oath, or not.

Q. You didn't put them under oath?

A. I just see the witnesses' signature.

Q. You didn't put them under oath?

A. No, sir.

By the Court: It is printed on there.

A. There's a printed oath on there, though.

Q. You don't swear the people to it?

A. No.

Q. You didn't go out and look at the cattle, either, did you?

A. No, sir, I didn't.

Q. Or hogs or sheep?

A. That's what I said awhile ago; I didn't inspect it.

Q. Then you don't know whether you returned an accurate list of each tax payer, as the law required you to do?

A. Unless he was there and gave it in to me.

Q. Now, Mr. Hill, you advised them they didn't have to list the sucking animals, didn't you?

A. Sure.

By Mr. Conrad: I object to the form of that question, because as a matter of law a sucking animal, as long as it is a sucking animal, is a part of the dam; and if the dam is assessed, that includes the sucking animal; it is a part of the increase.

By the Court: He can answer the question.

Q. You did answer it, didn't you; you said that you told them they didn't have to include sucking animals in the return?

A. If they asked me, I did; yes, sir.

[fol. 241] Q. As a matter of fact, you didn't intend to assess sucking animls and didn't assess them?

A. No, sir; the majority of farmers all know that.

Q. You didn't assess chickens?

A. No, sir.

Q. You undertook to assess sheep at a flat rate of five dollars?

A. Yes, sir.

Q. You were instructed to do that by the county board, wasn't you?

A. No, sir; not by the board; when the assessors met, the County Court called the assessors in—all the 19 assessors—and that was the valuation that was agreed on by all the assessors as being fair, on about a hundred per cent of the value of a sheep, taking them all as they run.

Q. A flat rate of five dollars?

A. Yes, sir.

Q. You also agreed and assumed that common mules should be put in at forty dollars, didn't you?

A. When, in 1926?

Q. Yes, sir?

A. I can't recall whether it was just priced at that.

Q. Well, do you know whether it was that, or not?

A. We had a rate.

Q. You had a rate on common mules, didn't you?

A. Yes, sir.

Q. You had a rate on grade cattle, three years and over—a flat rate?

A. Yes, sir.

Q. You had a rate for grade cattle of three years—a flat rate?

A. Yes, sir.

By Mr. Wesner: I want to interpose an objection to "flat rate."

[fol. 242] By Mr. Calvird: He mentions a flat rate, regardless of the fact that he just testified that the price was reasonable and fair for a common one and that they would go up or down, according to the value.

By the Court: You understand what he means by flat rate?

By Witness: I thought that he said flat rate, I thought he meant thirty dollars a head, or five dollars a head.

Q. That's what you meant—a flat rate?

A. No, I couldn't say that; we average on them.

Q. Yes, sir, I refer——

By Mr. Wesner: Object to him stating again that he answered that it was assessed at a flat rate; because that is an intentional misinterpretation of the witnesses' testimony, absolutely and nothing else.

Q. You didn't go out and look at any cattle, did you?

A. Well, I don't know whether I went out to look at any; I said I expect I looked at some.

Q. Well, you might have, but you did, didn't you?

A. Yes.

Q. Now when a man brought in a return showing seven head of grade cattle three years old, you would put it in at so many dollars a head didn't you?

A. I have told you I averaged the cattle.

Q. Yes, sir.

A. I asked him if they were average cattle.

[fol. 243] Q. And if he said they were average cows, all of them, you put them in at a flat rate, didn't you?

A. I put them in so much per head.

Q. And that is the same for every tax payer, if he instructed you, or told you that he had average cattle, wasn't it?

A. Yes, sir.

Q. You didn't put one higher and another one lower?

A. No.

Q. Now you had a better flat rate on the pure breeds, didn't you?

A. Pure breeds would be worth more than the others; yes, sir.

Q. And you had a flat rate on pure bred cattle?

A. I think not.

Q. Don't think you had a flat rate on pure breeds; only had a flat rate on grades then?

A. Yes.

Q. And hogs were so much a hundred pounds?

A. Yes, sir.

Q. How much; do you remember?

A. I don't remember; but it would be the price the 1st day of June; I don't remember just what it was. Don't remember just what that was in 1926; I guess something like ten dollars a hundred.

Q. About ten dollars per hundred is your impression?

A. Yes, sir; as well as I remember: I wouldn't say for sure what it would be that far back.

Q. And all the—the pure bred hogs you put in at a higher price?

A. Yes, sir.

Q. And then the grade stuff was assessed on a flat rate?

A. By the hundred.

[fol. 244] Q. Yes, sir.

By Mr. Wesner: That is another misinterpretation of the witness' testimony; the grade stock were all assessed at thirty dollars a head.

By Mr. Rucker: He didn't say anything of the kind; he said it was so much a hundred pounds.

By Mr. Wesner: He said so much per head for grade cattle.

By Witness: I said so much a hundred pounds for hogs, and so much a head for grade cattle.

Redirect examination:

Q. The figures were just as a suggestion, weren't they?

A. Yes, sir.

Q. But you assessed—or your intention was, to the best of your judgment, to assess it at its actual worth and value?

A. Yes, sir.

Recross-examination:

Q. Now didn't you know what these valuations were going to be when you met down there, down here with the County Court, didn't you?

By Mr. Conrad: I object to that question.

By the Court: He said they determined on it.

By Mr. Calvird: He said——

By Mr. Conrad: The question has been asked as if they agreed on a valuation, when he particularly made the explicit answer that they just consulted with each other as to what they were to do in performing their duties as assessors in the various townships.

[fol. 245] By Mr. Calvird: They didn't agree as to what it would be—the county court had said that it was — go at a hundred per cent of its value.

By the Court: Did you fix this standard, to be able to use it as an invariable rule, or as a basis of their real value in money?

A. Well, there is 19 townships in this county.

Q. I understand; I'm not asking you that.

A. And nineteen different assessors.

By the Court: You didn't understand. Did you fix that as an unvarying rule?

A. No, not without varying. We were allowed to vary, according to our judgment.

Q. Could you go above that, or lower?

A. Yes, sir; go above or below, either. You see farmers, as a general thing, they feed stock—canners and cows, and they figure they are not worth a great deal; and they don't want them assessed as high as maybe as an average cow would be assessed, or as high as a steer; and we make that variation.

By Mr. Rucker:

Q. Let's go back again. Now, as a matter of fact, you didn't assess any grade cattle three years old and older over $30 a head, did you; that was your top price?

A. No; assessed part of them higher than that.

Q. Do you remember any one particular——

By Mr. Wesner: Object to that.

A. Don't know whether any specific cow went over it, but there were cows, now, in a number of cases——

[fol. 246] Q. Not talking about milch cows now, talking about a bunch of cattle a man had feeding, or had here on pasture—grade cattle?

A. Three years old and above?

Q. Three years old and over; now that was a thirty dollar valuation?

A. Yes; I think——

Q. Sir?

A. That I assessed some higher than thirty dollars.

Q. But the great bulk of them you assessed at $30 didn't you?

By Mr. Wesner: I submit that the witness answered the question.

Q. The great bulk of them you assessed at $30 a head, didn't you?

A. The great bulk——

By Mr. Wesner: Submit that an answer to that question is a mere repetiton of the answer that the witness has already given in evidence.

Q. What was his answer?

By Mr. Wesner: He told you that he assessed them, some above and some below.

Q. Yes, I thonght that's what you would say. Now how did you assess the great bulk of them; didn't you assess them at $30 a head?

By the Court: He can answer the question.

Q. Didn't you; now?

By Mr. Calvird: Can you remember how you assessed them?

A. I rather think I did; although I am not positive about that.

Q. That's what you agreed on down there with the county court, wasn't it?

A. Yes.

[fol. 247] Q. Thirty dollars a head on cattle?

A. Yes, sir.

By Mr. Wesner: I'm objecting to agreement, because the witness' testimony doesn't show any agreement; it shows there was a standard fixed, but they were allowed to vary it up or down, according to the value of the property.

By the Court: Yes; that's what he testified.

Q. Did you assess any fat steers in this township as much as a hundred dollars a head?

A. I don't remember; possibly I did.

Q. Don't you remember that you didn't?

A. No, I can't say; told you I didn't remember if I did.

Q. Did you look at the market report of the 1st day of June?

By Mr. Wesner: Object; immaterial.

A. I couldn't tell you.

Q. Did you, or not, look at the market report for the 1st day of June, before making it?

A. I don't remember; possibly I did.

Q. If you did, it didn't have anything to do with your assessment, did it; because you say that you entered into an agreement down there with all the assessors, what you were going to use as a certain standard for making your assessment?

By Mr. Wesner: Object to the form of the question, for the reason of the fact that the witness' testimony doesn't show any agreement; and it is improper in form, and I object to the witness answering until it is properly cor-
[fol. 248] rected to conform to the witness' testimony in this case. Object to the gentleman assuming that he had said evidence which the witness has absolutely not testified to; and object to him terming it an agreement.

By Mr. Rucker: He said they agreed to use that as a standard.

By the Court: Yes.

Q. So, I say, that you made your assessments on the basis of that agreement that was entered into down there, rather than from the market reports, didn't you?

By Mr. Wesner: Renew objection; no evidence of any agreement.

By the Court: He can testify as to what he did.

Q. Didn't you?

A. On cattle, I guess I did.

Q. And you uniformly followed it, didn't you?

A. Hogs, we tried to take the market value the 1st of June.

Q. You tried to—and on sheep you had an agreement as a basis, didn't you?

A. Yes.

A. And you uniformly followed it, didn't you?

A. Yes.

Q. And on horses you did the same thing, didn't you?

A. Yes, sir.

Q. And on mules you did the same thing, too, didn't you?

A. Yes, sir.

By Mr. Wesner: Renew objection to the term agreement; that there is no testimony of an agreement; that the wit-
[fol. 249] ness' testimony, as well as the testimony entered

by different witnesses is that there was a standard arrived at, they were to take as a rule in assessing this property, and they were to grade it above, according to the value of the property assessed.

By the Court: Yes, I understand the testimony.

(Witness excused.)

Mr. R. L. GAMLIN, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. Your name is R. L. Gamlin?
A. Yes, sir.
Q. Where do you live, Mr. Gamlin?
A. In Bogard Township.
Q. That is which way from the county seat?
A. It is northwest; the corner would be.
Q. What is your business?
A. Farmer.
Q. How long have you been engaged in farming?
A. All my life.
Q. What official position do you now hold in Henry County?
A. Township Clerk of Bogard Township.
Q. Are you the assessor?
A. Yes, sir.
Q. Mr. Gamlin, did you assess the property of your township in 1926?
A. Yes, sir.
Q. How did you assess that property, as to value?
A. I assessed it in my judgment at what it was worth in money.
[fol. 250] Q. At what it was worth in money?
A. A fair cash value.
Q. Did you see the property?
A. I saw practically all of it.

Cross-examination.

By Mr. Rucker:

Q. You assessed the sucking animals, did you?
A. No, sir.

Q. You assessed no poultry of any kind?

A. No, sir.

Q. You met with the other assessors, didn't you, at the time when other witnesses have disclosed there was a meeting here with the county court?

A. Yes, sir.

Q. And you were to use five dollars apiece for sheep, didn't you?

A. I used five dollars apiece, as an average.

Q. Well, that is, ordinary sheep; didn't you?

A. Ordinary average sheep, yes, sir.

Q. Of course pure breeds you assessed higher?

A. Haven't got any pure breeds.

Q. Well, then, you assessed all sheep, as a matter of fact, at five dollars a head, didn't you?

A. Yes, sir; think I did—averaged that.

Q. Yes, sir; all the way through now you also had a basis, or a figure for fixing the basis there for the assessment of cattle three years and over, didn't you, at this same meeting?

A. I don't remember it was fixed on that aged cattle; average basis for all cattle, I think you will find.

[fol. 251] Q. Didn't you have this rate for three years and over, and under three years?

A. I don't think it is a rate.

Q. I mean basis of valuation?

A. Yes. Yes, and use my judgment.

Q. Do you remember what you agreed to down there as the basis?

A. Not exactly; I think $30 a head, as an average price.

Q. And isn't that what you used?

A. That average was agreed for the county.

Q. And isn't that what you used?

A. That's what I intended to follow.

Q. And you did follow it, didn't you?

A. Yes, sir.

Q. That was on April 26th, wasn't it?

A. The meeting?

Q. Yes, the meeting, or a day or two before you assessed, wasn't it?

A. I don't remember.

Q. Well, you remember it was just before the assessment?

A. Yes, sir.

Q. On hogs, do you remember your basis for assessing hogs was there agreed upon?

A. Well, I wouldn't want to say positive, but based on stock hog prices the 1st of June.

Q. Stock hog prices the 1st of June?

A. Yes, sir.

Q. Now you got that from the market?

A. From the market; yes.

Q. What was it?

A. I don't know; I don't remember.

[fol. 252] Q. Could you refresh your memory and find that out?

A. Possibly could.

Q. You don't know what hogs were now?

A. No, sir.

Q. Did you assess good hogs at over ten dollars a hundred?

A. I think so.

Q. You did assess some over ten dollars a hundred?

A. I think they were worth more than that; I don't remember though.

Q. If they were worth more than that, you think they were assessed at more than that?

A. Yes, sir.

Q. Your return doesn't show the weight of the hogs, does it?

A. No, sir.

Q. You didn't go out and look at the hogs, did you?

A. Looked at most all of them.

Q. To take their weight?

A. Yes, sir.

Q. You don't remember what you assessed them at, though?

A. Per hundred?

Q. Yes.

A. No; I don't.

Q. You think it was more than ten dollars, do you?

A. I think so; if you show me a stock hog, I possibly can tell you about what it was worth.

Q. Do you remember any particular man in Bogard Township whose hogs you inspected?

A. Any particular man?

Q. Yes, I want to get the assessment list, and see if I can find out what you used.

By Mr. Wesner: I object to that.

By the Court: Well, he says that he saw practically all of the hogs.

[fol. 253] Q. Are there any good sucking lambs in your township?

A. Not many.

Q. Whatever sucking lambs there were, you didn't assess them?

A. No, sir.

Redirect examination:

Q. Poultry isn't assessed anywhere in the State of Missouri?

A. Not to my knowledge.

By Mr. Rucker: Do you know anything about that?

By Mr. Calvird: I am asking him if he knows.

By Mr. Rucker: That question was leading; directing attention to the answer and suggesting it.

Q. Do you know whether poultry is assessed in the state, or not?

A. I don't; outside of Henry County.

Recross-examination:

Q. You know that farmers in your township practically all have flocks of poultry, don't they? Don't you know that?

A. Yes, sir.

Q. You know they are of very considerable value, don't you?

A. Yes; they are valuable—certainly, they are.

Q. Yes, sir.

Redirect examination:

Q. Tell His Honor whether or not you used the basis that Mr. Rucker asked you about as a guide for average animals, but, irrespective of that, if the animal was worth more, you assessed it at more?

[fol. 254] By Mr. Rucker: Object to that for two reasons: first, it is leading and suggestive; second, cross examina-

tion of his own witness, and it has already been answered. We don't claim that they made any binding agreement down there, in writing, under seal and consideration, to assess each animal at so much.

By the Court: No, that didn't include anything of that kind; nobody thinks that; don't think anybody would insist on that view, because the evidence is all the other way.

By Mr. Rucker:

Q. What was the average weight of cattle in your township three years old and over?

A. That would be too much of a guess; I couldn't say, I don't remember.

Q. Did you have any fat cattle at all in the assessment?

A. No.

Q. No fat cattle, at all?

A. Don't think over one bunch.

Q. One bunch of what?

A. One bunch of beef cattle, that would be in that class, at all—but wasn't fat cattle—steers.

Q. Well, did you have any good cows?

A. Probably quite a few above the average; I don't remember.

Q. Do you remember what you assessed them at?

A. No.

Q. What did you assess cows ordinarily at?

A. I give an average on them, around thirty dollars.

[fol. 255] Q. That was what you undertook to do, was to assess an average cow in your township at thirty dollars a head, didn't you?

A. Yes, sir.

Q. Whether she weighed 800 pounds or a thousand pounds?

A. No, sir.

Q. Did you assess a thousand pound cow—thousand pound cows at more, in your neighborhood?

A. More than I did eight hundred pound cows?

Q. Yes.

A. According to quality.

Q. Well, I mean that—asking you that.

A. Yes, sir.

Q. Does that assessment list show that you did?
A. Yes, sir.

By Mr. Wesner: I submit, he answered the question; he said, according to quality.

Q. Did you?
A. What?
Q. Did you assess a thousand pound cow more than an eight hundred pound cow—ordinary cow?
A. There is no place on the list to list different weights of cattle.
Q. No, there isn't?
A. We assess the cattle just like it says we should.
Q. And didn't you assess them all at thirty dollars a head?
A. Average cattle—yes, sir.
Q. Assessed an average cow or average cattle?
A. Average cow.
Q. Average cattle?
A. I judge around 900 to 1,000 lbs.
Q. Are you talking about cows, or cattle?
A. About cutter cattle.
[fol. 256] Q. That is, three years, and over?
A. Yes, sir.
Q. And that they would average around how many pounds?
A. Around a thousand pounds.
Q. Now you assessed those cattle that averaged around a thousand pounds in your township at thirty dollars a head, didn't you?
A. Yes, sir.
Q. And you did that as a uniform thing, as to that township?
A. Yes, sir.
Q. Now don't you know, and didn't you know at the time, that that kind of cattle were selling on the market in Kansas City at from $6.45 to $8 a hundred?
A. No.
Q. Didn't know anything about that?
A. Don't know; probably knew it then; don't know it now.
Q. Now the Kansas City Daily Drovers' Telegram is a good guide for that country, isn't it?

A. It is on the class of stuff that goes on the market.

Q. Didn't you have any stuff at all in these classes here?

A. Yes, sir; I suppose I did, no doubt.

Q. They were as good as common cows and cutters, were they?

A. No, sir.

Q. They were worse than cutters, then?

A. I should judge some are.

Q. Well, of what average were they?

A. A few Jersey yearlings and steers that were canners and cutters.

Q. Was that the average in your township?

A. No, sir.

[fol. 257] Q. I'm asking you about the average, now?

A. About thirty dollars a head.

Q. I'm not talking about values, talking about the average classification—you know what common cows and cutters are, don't you?

A. Yes, sir.

Q. Well, was the average classification as good as that?

A. Well, I judge it was.

Q. As a matter of fact, the average classification of cattle now in your township is better than cutters, isn't it—that's about as common as they get, isn't it?

A. Oh, there is common cows, yes, sir.

Q. Common cows—all right——

A. You see in your territory, you have to take all classes of cattle.

Q. Well, common cows—the commonest cow quoted on the Kansas City market on June 1st, was $4.50 a hundred, and that would make them worth $45 apiece—the commonest cow quoted there?

A. Yes, sir; ordinary cows run over.

Q. $4.45 to $8 a hundred, isn't that about what it is, on ordinary lean cattle? On the ordinary run of cattle?

A. Yes, sir; the average run of cattle.

Q. The ordinary run that was on the Kansas City market, from $4.45 a hundred to $8 a hundred—in other words, from $45 to $80 a head, and you assessed them all at $30 a head, didn't you?

A. I assessed the average stuff at thirty dollars a head; it wasn't stuff that was worth from $45 to $80.

Q. You said a thousand pound cow was the average in your township?

A. Because a cow weighs a thousand pounds, is no sign [fol. 258] it is worth $45 to $80.

Q. You said, though, it was average cattle?

A. A thousand pound stuff?

Q. Talking about the cattle in your township?

A. An average over the county?

Q. Talking about in your township?

A. Average cattle.

Q. Where you had to assess; wasn't it just ordinary average cattle?

A. Yes, sir.

Q. I hand you now seven assessment lists, being of people living in Bogard Township, whose names begin with Y and W—they are all W's—and that one is Y; I'll ask you to look at that, and see if there is 106 head of cattle, three years and more, given in on those lists, assessed for more than $30?

By Mr. Calvird: Object to him singling out a few instances.

By the Court: It is cross examination.

A. What was the question—if I can find any assessed at more than thirty dollars?

Q. Yes; cattle three years and over?

(Witness examines lists.)

A. Is that it (indicating)?

Q. It looks like $30 to me—I'm talking about three years old and over?

A. Oh, yes, sir; that must have been entered here on the wrong line; there's one, $40.

Q. You think that you entered that on the wrong line?

A. Yes.

[fol. 259] Q. You intended it at thirty dollars?

A. No, sir.

Q. Assessed those at $30?

A. That is 14 head of fat cattle——

Q. Three years and over—$30 a head—that's one to three years?

A. Yes, sir.

Q. I'm asking you about three years and over; that's the question.

A. All right, then.

Q. There's one bunch you just assessed at $25, didn't you?

A. I think so.

Q. Not a single bunch of cattle I'm talking about now, not an individual cow, or there isn't a single bunch of cattle that is assessed at over $30 a head, is there?

A. No.

Q. And are you able to find in your township a single bunch of cattle assessed at over $30?

A. A single bunch?

Q. I mean an average bunch of cattle?

A. You mean more than one?

Q. A group of cattle?

A. Yes, sir.

Q. Do you know whose they were?

A. No, sir; I don't.

Q. You have one cow right here (indicating), a single individual, assessed at $40?

A. Yes, sir.

Q. Do you remember that particular——

A. No, I don't remember that particular cow—sure don't—what's the name?

Q. That's Mr. Waymeyer—R. W., do you remember that one?

A. No, I don't remember it, from—just from the looks of it there, they made a mistake in the line they put it on. [fol. 260] Q. You must have intended it for one pure breed?

A. Probably meant it for one pure bred bull.

Q. A pure bred bull, $45?

A. Yes.

Q. You don't now recall any bunch of cattle in your township that you assessed at more than thirty dollars?

A. No particular bunch; no, sir.

Q. Do you remember anything about how much that bull weighed, or anything about it?

A. How do you expect me to remember?

Q. I thought, only that one, you might, that's all.

A. No, sir.

By Mr. Rucker: If the court please, the clerk of the county court just furnished me, and I now offer, beginning with the assessments lists of Bogard Township, where the name of the taxpayer begins with S, which show that the taxpayer owned common cattle, on June 1st, 1926—I have eliminated from the letter S, those that don't show that the taxpayer owned cattle or stock, and I desire to offer in evidence that part of the assessment list which shows the number and value per head of grade cattle, three years old, and over.

By Mr. Wesner: We renew the same objections.

By the Court: Yes; all those objections are understood, that apply to this; and I will admit them.

By Mr. Rucker: All right, I'll read them to the stenographer.

[fol. 261] By Mr. Rucker: The following lists show, first the number of grade cattle, and, second, the assessed value per head, of three years old, and over.

George L. Stuart Five at $30.
J. G. Sites, three at $30 a head.
H. W. Sites, three at $30 a head.
E. H. Sites, nine at $30 a head.
Mrs. Anna Simpson, 10 at $25 a head.
F. Schenever, eleven at $30 a head.
B. F. Spry, 29 at $30 a head.
Ira O. Schutz, 7 at $30 a head.
Frank Smith, three at $30 a head.
R. Setzer, 4 at $30 a head.
W. A. Stansberry, 3 at $30 a head.
J. H. Snow, five at $30 a head.
E. H. Simmons, six at $30 a head.
R. R. Sharp, five at $30 a head.
Ralph Smith, five at $30 a head.
J. M. Smithers, one at $30 a head.
Alec Sloan, 12 at $30 a head.
A. C. Schnerf, four at $30.
F. W. Schmidt, 17 at $30 per head.
James Sites, eight at thirty dollars per head.
Charles Lingle, ten at $35 per head.
M. T. Smith, seven at $40 per head.
Manuel Schnaub, three at $40 a head.
J. H. Sullivan, four at $20 a head.

(Witness excused.)

[fol. 262] Mr. W. H. SANDERS, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. State your name?
A. H. W. Sanders.
Q. Where do you live?
A. South of Deepwater.
Q. Henry County?
A. Henry County, yes, sir.
Q. What is your business?
A. Farming.
Q. How long have you been so engaged?
A. All my life.
Q. Are you an official of any kind in Henry County, of any township in Henry County?
A. Yes, sir.
Q. What township?
A. Fairview Township.
Q. What office do you hold?
A. Township clerk and township assessor.
Q. How long have you held that office?
A. Eight years.
Q. Did you assess the property in your township in 1926?
A. Yes, sir.
Q. Tell His Honor, Mr. Sanders, to the best of your ability, how you assessed that property, and what percentage of its value that you assessed it?
A. Well, I assessed it, as far as my judgment went, at a hundred per cent valuation.

Cross-examination.

By Mr. Rucker:

Q. You met with the other assessors of Henry County, with the county court, sometime in the early spring of 1926, didn't you?
[fol. 263] A. Yes, sir.
Q. Do you remember when it was; we have never gotten that date in the record?
A. Well, it was in May between the 1st and 10th of May, I think.
Q. You think—you aren't certain about that?

A. No; I am not certain.

Q. But the county court issued you script for your mileage and per diem, didn't they, for your expenses?

A. Yes, sir.

Q. That would fix it—the date of the warrant would be about the time?

A. Sometimes they write it on that date; and sometimes later.

Q. But it wouldn't be any later than the date of the warrant, would it?

A. No; it would be earlier than the date of the warrant.

Q. Now at that time you all discussed there the method you were going to pursue in fixing valuations, didn't you?

A. Yes, sir; some talk.

Q. That was, of course, the purpose of the meeting, wasn't it?

A. Yes, sir; to meet and to discuss it, to try to get it a hundred per cent valuations.

Q. Yes, I say, the purpose of your meeting was to determine valuations, wasn't it—well, all right, you were meeting for the purpose of arriving at a way to get a hundred per cent valuation?

A. Well, we had a discussion of that; yes, sir.

[fol. 264] Q. And you decided there to assess sheep at $5 a head, didn't you?

A. No, sir.

Q. You don't remember that part of it?

A. That was an average we used, for such average.

Q. Well, that's what you did, wasn't it?

A. Some sheep were assessed higher, and some lower.

Q. I'm not talking about pure bred sheep—look at me, and——

By Mr. Wesner: There was nothing said about pure bred sheep by the witness.

By the Court: The witness, I think, is trying to tell it.

Q. Didn't you take five dollars as a basis in your township for assessing sheep?

A. Well, I used it in some; and some were assessed higher and some lower.

Q. Well, didn't you assess the average sheep——

A. Used that as an average.

Q. Did you assess common grade sheep and more than five dollars a head in your township—on a single bunch?

A. I don't remember that far back.

Q. How do you remember that you assessed some lower and some higher, then?

A. We just used five dollars as a basis, to help on some of the list.

Q. What do you mean by five dollars as a basis?

A. As an average.

Q. If you weren't going to assess at five dollars, what [fol. 265] do you mean by using five dollars as a basis, explain to the court?

A. We used that as an average.

Q. What kind of sheep were you going to assess at five dollars?

A. Well, I don't know nothing about sheep.

Q. Well, didn't you assess them?

A. I assessed them; never saw them.

Q. What kind of sheep did you assess at five dollars?

A. Grade sheep.

Q. Now you assessed every grade sheep in your township at $5.00?

A. I didn't say that I assessed every one of them.

Q. You didn't assess any for more than five dollars?

A. I don't remember.

Q. If you did, you don't recall it, do you?

A. Well, we don't have many sheep in my township.

Q. What was your basis for cattle, three years and over?

A. I don't know as we had a schedule on three years and over.

Q. Didn't you use thirty dollars, on cattle three years and over?

A. We was to make it around a thirty dollar average on that class of cattle; on all classes thrown altogether.

Q. On all classes?

A. That was to be around a thirty dollar average.

Q. And that's what you used, wasn't it?

A. Some was assessed higher, and some lower.

Q. Well, did you assess any for seventy-five dollars?

A. No, sir.

[fol. 266] Q. Did you assess any for sixty dollars?

A. Not that I know of, I didn't.

Q. Did you assess any at forty dollars?

A. I probably did; I don't remember.

Q. You didn't go higher than forty dollars in a single case in your township, did you?

A. Well, I don't remember whether I did, or not.

Q. But you do remember that the great bulk of them you assessed at thirty dollars a head, didn't you?

A. Well, that might have been, on an average.

Q. Just answer the question; don't you remember that the great bulk of them you assessed at thirty dollars a head?

A. No, sir; I don't.

Q. You don't remember that; don't know whether you did or didn't then?

A. I didn't figure the class altogether.

Q. Well, all right, did you assess all classes at thirty dollars—the bulk of them?

By Mr. Wesner: Submit he answered the question.

By the Court: Yes; he says he wouldn't say whether he did, or not.

Q. He didn't say whether he did, or not—this is cross examination—what is your township?

A. Fairview Township.

Q. And the lists of Fairview Township will show what you did. You didn't assess any sucking animals?

A. No, sir.

Q. Didn't assess any chickens?

A. No, sir.

[fol. 267] Q. What did you assess hogs at per hundred pounds?

A. I don't know what it was; at the market value on the 1st of June.

Q. And what did you use; what basis did you use?

A. I don't remember.

Q. Could you tell from looking at the assessment list what you used?

A. No, sir.

Q. Couldn't tell by that; then there is no way on earth of finding out what basis you used?

A. We used the market value.

Q. What did you use for assessing mules?

A. Well, we—generally speaking, we had our own judgment.

Q. Well, what was your judgment down there?

A. I don't remember that far back.

Q. Didn't you use fifty dollars a head for good mules?

A. I don't remember; don't know what they were assessed at; the list will show.

Q. Well, didn't you use fifty dollars for good mules, follow that as a basis?

A. Well, I can't remember.

Q. You didn't assess a cow with a calf by its side any higher than you did a cow that didn't have any calf?

A. No, sir.

Q. Didn't take the calf into consideration at all?

A. No, sir.

Q. Didn't assess a sheep with a sucking lamb any higher than one that didn't have a sucking lamb, did you?

A. No, sir.

(Lists brought in and handed to Mr. Rucker.)

[fol. 268] Q. Now, I have asked the county clerk to bring to me, and he has delivered to me, the assessments lists of all the tax payers in Bear Creek—no, get Fairview Township. I now hold in my hand and offer to introduce in evidence all the assessments lists of the taxpayers whose names begin with S, in Bear Creek Township, whose assessments lists was that of the 1st of June, 1926, that owned any cattle.

By Mr. Wesner: We renew the same objection.

Overruled.

Read by Mr. Rucker:

Henry Schwatters, 9 head at $30 a head.
Clem Schwansen, four head at $30 a head.
A. R. B. Lovan, five head at $30 a head.
W. W. Sargent, 3 head at $30 a head.
J. S. Sargent, six head at $30 a head.
G. Schutz, one at $30 a head.
P. M. Streckler, 2 at $30 a head.
George Smathers, four at $30 a head.
D. D. Spurgeon, four at $30 a head.
Louis Swatters, 6 at $30 a head.

Ben Swatters, one at $30 a head.
R. A. Schnoeblen, 3 at $30 a head.
R. B. Sullivan, four at $30 a head.
Frank Singer, one at $30 a head.
O. W. Still, four at $30 a head.
Thomas Singer, two at $30 a head.
U. Staehlt, two at $30 a head.
[fol. 269] G. W. Sapp, four at $30 a head.
Wesley Skaggs, five at $30 a head.
Everett Sapp, two at $30 a head.
Daniel Shoemaker, three at $30 a head.
And none assessed at any other value.

By Mr. Calvird: Object also for the reason that they are not properly identified; and that it is an offer on the part of plaintiff to show the assessment of property, when there is no evidence to show, as to the kind and character or the value of the property assessed.

By the Court: Objection overruled.

By Mr. Rucker: Yes, I will put the whole thing in, if you are going to make that kind of an objection. Call the county clerk.

Q. Now you say you had thirty dollars for a general average down there?

A. Well, I said some—assessed some at $30, assessed some higher than that.

Q. What basis did you take for the general run, general average; did you use any basis?

A. Well, for good milch cows, assessed as high as forty dollars for them.

Q. Good milch cows?

A. Yes, sir.

Q. Just where they were cattle on feed, or on pasture?

A. Had no feeder cattle in the township.

Q. Didn't have any on feed?

A. No, sir.

Q. Well there were cattle running on pasture then in your township?

A. Yes, sir.

[fol. 270] Q. What did you assess that character of cattle at?

A. Stock cattle was all we had; and cows.

Q. What did you assess stock cattle at per head?

A. Well, I don't remember.

Q. You think you assessed milch cows at forty dollars?

A. I think we assessed some that high; wouldn't be certain about it at this time.

Q. That was your top price down there—forty dollars? You didn't assess any over that?

A. No, sir.

Q. You didn't assess a single head of cattle in your township at over forty dollars?

A. No, sir.

Q. Now I hand you assessment lists of persons whose names begin with S, living in Fairview township, the special assessment of property as of the 1st of June, 1926, and ask you to look those names over, see if you believe that that covers the names of the persons in the township whose names begin with S, who owned cattle?

By Mr. Wesner: Object; immaterial and irrelevant at this time.

A. I don't remember whether there is any more than that, or not.

(Witness excused.)

Mr. Ray Dooley, recalled by Mr. Rucker, testified as follows:

Q. As Clerk of the County Court of Henry County, do [fol. 271] you keep under your care and control the various assessment lists returned by the respective taxpayers of this county?

A. Yes, sir.

Q. I hand you a bunch of assessment lists, real estate and personal property, and ask you if they are all of the assessment lists for persons whose names begin with S in Fairview Township in this county, showing the taxable property that various people owned on the 1st of June, 1926.

A. I think it is.

Q. Well, have you gone through your records?

A. Yes, sir.

Q. Are they all you have there?
A. All I could find there, in the 1926 assessment.
Q. That is all you could find in your office?
A. Yes, sir.
Q. They are all supposed to be there, aren't they?
A. Yes, sir.
Q. And that is all you had in your office?
A. Yes, sir.
Q. While you are on the stand, I will ask you if the bunch I now hand you are all of the lists of citizens residing in Bear Creek Township in Henry County, who made return for assessment of June 1st, 1926, taxes of 1927?
(38 lists, marked Exhibit K2.)
A. Yes, sir.

By Mr. Calvird: Same objection.

Q. I hand you now a bunch, and ask you if these assessment lists are all of the lists retured by taxpayers of Bogard Township, in Henry County, showing the taxable property they owned on the 1st of June, 1926?
A. Yes, sir.

[fol. 272] (Marked Exhibit L—46 lists.)

By Mr. Calvird: I object to the introduction of these lists, as irrelevant and immaterial; doesn't tend to prove or disprove any issue in this case; an attempt to show assessments of property without any evidence as to the kind of property, or the actual value of the property therein assessed.

Objection overruled.

By Mr. Rucker: Offer in evidence the assessment lists identified by the county clerk for Bear Creek Township; that part of the assessment list which shows the number and the value per head of grade cattle three years old and over, owned by the respective taxpayers. I offer the same with regard to Bogard Township, and the same with reference to Fairview Township, (Exhibit M), all beginning with the letter S; that part of each one which shows the list of cattle three years old and over.

By Mr. Calvird: Object for the same reason; it is an attempt to dispute the assessment therein made, without evi-

dence as to the actual worth or value of the property therein assessed.

Overruled.

"Exhibit K2"

Assessment of All Taxpayers in Bear Creek Township, Henry County, Missouri, Showing All Livestock Returned by Each and Assessed Valuations Thereof

[fol. 273] Frank Ragland:

2 horses and mares, 3 yrs. old and over, common	60
6 mules, all ages, common	300
25 grade cattle, over 3 yrs.	750
12 other hogs, all ages	30

R. A. Schwehelen:

4 horses and mares, 3 yrs. old and over, good	120
1 mule, all ages, good	50
3 grade cattle, 3 yrs. and over	90
3 grade cattle, under 3 yrs.	60
3 other hogs, all ages	40

Ben Swaters:

2 horses and mares, 3 yrs. old and over, common	60
1 mule, good	50
12 grade cattle, 3 yrs. and over	360
1 other hog	20

Louis Swaters:

4 horses and mares, 3 yrs. old and over, common	120
6 grade cattle, 3 yrs. old and over	180
3 grade cattle under 3 yrs	60
7 other hogs	110

D. D. Spurgeon:

1 horses and mares, 3 yrs. old and over, common	30
4 grade cattle, 3 yrs. and over	120
4 grade cattle, under 3 yrs.	80

[fol. 274] Ge. Swatters:

4 horses and mares, 3 yrs. old and over, common 120
1 horses and mares under 3 yrs. old 30
4 grade cattle, 3 yrs. and over 120
5 other hogs, all ages 70

P. M. Stricker:

3 horses and mares, 3 yrs. old and over, common 90
2 grade cattle, 3 yrs. and over 60

Gleis Sweets:

1 horses and mares under 3 yrs. 70
1 grade cattle, 3 yrs. and over 30
1 grade cattle under 3 yrs. 30

J. S. Sargent:

6 horses and mares, 3 yrs. old and over, common 200
6 grade cattle 3 yrs. and over 180
2 grade cattle under 3 yrs. 40
2 hogs 30

W. W. Sargent:

2 horses and mares, 3 yrs. and over, good 60
3 mules, all ages, common 160
3 grade cattle 3 yrs. and over 90
3 grade cattle under 3 yrs. 60
1 hog 10

Henry Swaters:

1 horses and mare, 3 yrs. and over, common 30
2 mules, all ages, good 100
[fol. 275] 9 grade cattle, 3 yrs. and over 270
12 sheep, all ages 60
1 other hog 20

Clem Schussler:

4 grade cattle, 3 yrs. and over 120
1 hog 20

R. B. Sullivan:

2 horses and mares, 3 yrs. old and over, common	60
2 mules, all ages, common	100
5 grade cattle, 3 yrs. and over	150
2 grade cattle under 3 yrs.	30
2 other hogs	30

W. B. Sullivan:

2 horses and mares, 3 yrs. old and over, common	60
4 grade cattle 3 yrs. old and over,	120
13 sheep, all ages	70
2 hogs, all ages	30

Frank Singer:

1 grade cattle, 3 yrs. and over	30

O. W. Still:

2 horses and mares 3 yrs. old and over, common	70
4 grade cattle 3 yrs. and over	120
10 sheep, all ages	50
4 hogs, all ages	60

Thos. Singer:

2 mules, all ages, common	100
2 grade cattle, 3 yrs. and over	60
1 hog	20

[fol. 276] U. Staehli:

3 horses and mares, 3 yrs. old and over, common	60
1 mule, common	50
2 grade cattle, 3 yrs. and over	60
1 hog	10

G. W. Sapp:

3 mules, all ages, common	120
4 grade cattle, 3 yrs. and over	120
1 grade cattle, under 3 yrs.	20
2 hogs	30

Wesley Skaggs:

4 horses and mares 3 yrs. old and over, common..... 120
1 mules, all ages, common (No figures given).....
5 grade cattle, 3 yrs. and over..... 150
2 other hogs, all ages..... 30

Everett Sapp:

3 horses and mares, 3 yrs. old and over, common..... 90
2 grade cattle, 3 yrs. and over..... 60
2 hogs, all ages 30

Daniel Shoemaker:

1 horses and mares, 3 yrs. old and over..... 40
3 grade cattle, 3 yrs. and over..... 90

James Sargent:

1 horses and mares, 3 yrs. old and over, common..... 40

[fol. 277] T. B. Skaggs:

1 horses and mares, 3 yrs. and over, common..... 30
8 other hogs, all ages..... 130

Nora Sweets:

2 horses and mares 3 yrs. old and over, common..... 40
1 hog..... 20

EXHIBIT L"

Assessment of all Taxpayers Whose Names Begin with S in Bogard Township, Henry County, Missouri, and Showing all Livestock Returned by Each and Assessed Valuations Thereof

M. D. Smith:

Livestock	Aver. value per head	Total value
5 horses and mares, 3 years old and over, common	30	150
2 mules, all ages, good	50	100
4 hogs, all ages	20	80
7 grade cattle, 3 yrs. old and over	40	280
1 grade cattle, under 3 years old	20	20

Charles Single:

Livestock	Aver. value per head	Total value
6 horses and mares under 3 yrs. old	40	240
1 mule, common	50	50
10 grade cattle, 3 yrs. old and over	35	350
2 other hogs, all ages	20	40

J. H. Sullivan:

4 mules, all ages, common	40	160
4 grade cattle 3 yrs. old and over	40	160
[fol. 278] 2 grade cattle under 3 yrs.	20	40
3 hogs, all ages	20	60

Sumner Snapp:

2 horses and mares, 3 yrs. old and over, common	30	80
3 grade cattle, 3 yrs. old and over	40	120
1 grade cattle under 3 yrs.	20	20
3 other hogs all ages	20	60

George L. Stewart:

3 horses and mares, 3 yrs. old and over, common	30	90
4 mules all ages, common	40	160
5 grade cattle, 3 yrs. old and over	30	150
3 other hogs, all ages	20	60

J. G. Sites:

3 horses and mares, 3 yrs. old and over, common	30	90
1 mule, *all ages,* good	40	40
3 grade cattle, 3 yrs. old and over	30	90
3 purebred hogs, all ages	20	60

H. W. Sites:

3 horses and mares, 3 yrs. old and over, common	30	90
3 grade cattle, 3 yrs. old and over	30	90
2 other hogs, all ages	20	40

E. H. Sites:

Livestock	Aver. value per head	Total value
3 horses and mares under 3 yrs. old	30	90
9 grade cattle, 3 yrs. old and over	30	270
[fol. 279] 6 grade cattle under 3 yrs.	20	120
8 other sheep, all ages	5	40
2 other hogs, all ages	20	40

Mrs. Annie Simpson:

1 horses and mares, 3 yrs. old and over, good	30	30
5 grade cattle 3 yrs. old and over	30	150
10 grade cattle under 3 yrs.	25	250

F. Scheumacher:

4 horses and mares, 3 yrs. old and over, common	30	120
11 grade cattle 3 yrs. old and over	30	330
5 other hogs, all ages	20	100

Ben F. Spry:

3 horses and mares, 3 yrs. old and over, common	30	90
3 mules, all ages, common	50	150
6 grade cattle 3 yrs. old and over	30	180
23 grade cattle under 3 yrs.	30	690
4 purebred hogs, all ages, gr. cattle	20	80
12 other hogs, all ages	20	240

Ira O. Schultz:

3 horses and mares, 3 yrs. old and over, common	40	120
7 grade cattle 3 yrs. old and over	30	210
4 other hogs, all ages	20	80

Frank Smith:

2 horses and mares, 3 yrs. old and over, common	30	60
[fol. 280] 3 grade cattle 3 yrs. and over	30	90
1 hog	20	20

R. Seltzer:

Livestock	Aver. value per head	Total value
6 horses and mares, 3 yrs. old and over, common	20	120
4 grade cattle 3 yrs. old and over	30	120
4 other hogs, all ages	20	80

R. R. Shoup:

4 horses and mares, 3 yrs. old and over	40	160
5 grade cattle, 3 yrs. old and over	30	150
1 hog	20	20

W. A. Stansberry:

2 horses and mares, 3 yrs. old and over, common	30	60
2 mules, all ages, good	60	120
3 grade cattle, 3 yrs. old and over	30	90

J. H. Snow:

5 horses and mares, 3 yrs. old and over, common	40	200
2 mules, all ages, common	35	70
5 grade cattle, 3 yrs. old and over	30	150
3 grade cattle under 3 yrs.	30	60

E. H. Sammons:

8 horses and mares under 3 yrs. old	30	240
6 grade cattle 3 yrs. old and over	30	180
1 grade cattle under 3 yrs.	20	20
6 other hogs, all ages	20	120

Earl Smith:

[fol. 281] 2 horses and mares 3 yrs. old and over, common	30	60
3 mules all ages, common	40	120
5 grade cattle, 3 yrs. old and over	30	150

Chas. L. Smith:
J. M. Skaggs:
J. H. Schweer:
James Sites:

Livestock	Aver. value per head	Total value
2 mules, all ages, good	50	100
8 grade cattle, 3 yrs. old and over	30	240
5 grade cattle under 3 yrs	20	100
1 other hog	20	20

Suzan Shepperd:
W. H. Wehmeyer:

6 horses and mares 3 yrs. old and over, common	40	240
14 mules, all ages, common	40	560
19 grade cattle, 3 yrs. and over	30	570
5 other neat cattle, all ages, under 3 yrs.	20	100
52 other sheep, all ages	5	260
8 other hogs, all ages	20	160

J. D. Young:

6 horses and mares, 3 yrs. old and over, common	30	180
3 mules all ages, common	50	150
9 grade cattle, 3 yrs. and over	30	270

[fol. 282] J. M. Walker:

5 horses and mares, 3 yrs. old and over, common	50	250
2 mules, all ages, good	50	100
7 grade cattle, 3 yrs. and over	30	210
12 other hogs, all ages	20	240

Sam Walker:

2 horses and mares, 3 yrs. old and over, common	30	60
1 mule common	40	40
2 grade cattle, 3 yrs. old and over	30	60
2 grade cattle, all ages, under 3 yrs.	20	40
1 hog	20	20

Mrs. Hattie Wilson:

Livestock	Aver. value per head	Total value
10 horses and mares, 3 yrs. old and over, common	30	300
12 mules all ages, common	40	480
8 grade cattle 3 yrs. old and over	30	240
10 grade cattle under 3 yrs.	20	200
9 other hogs all ages	20	180

Geo. S. Welmeyer:

4 horses and mares, 3 yrs. old and over, common	30	120
2 mules, all ages, good	100	200
7 mules, all ages, common	50	350
12 grade cattle, 3 yrs. and over	25	300
5 other hogs, all ages	20	100

R. W. Welmeyer:

2 horses and mares, 3 yrs. old and over, common	30	60
[fol. 283] 7 mules, all ages, good	60	420
2 mules, all ages, common	30	60
14 grade cattle, 3 yrs. and over	30	420
1 grade cattle under 3 yrs.	40	40
12 other sheep, all ages	5	60
6 other hogs, all ages	20	80

F. W. Windmiller:

2 horses and mares 3 yrs. old and over, common	30	60
8 mules, all ages, good	40	320
1 grade cattle 3 yrs. and over	40	40
12 other hogs, all ages	20	240

D. E. Shepperd:
J. M. Smethers:

2 horses and mares, 3 yrs. old and over, common	20	40
1 grade cattle 3 yrs. old and over	30	30
2 other hogs, all ages	20	40

Alex Sloan:

Livestock	Aver. value per head	Total value
4 horses and mares 3 yrs. old and over, good	40	160
2 horses and mares, 3 yrs. old and over, common	30	60
3 mules all ages, good	50	150
6 yearlings	20	120
12 grade cattle, 3 yrs. old and over	30	360
1 grade cattle under 3 yrs.		
8 other sheep, all ages	5	40
8 other hogs, all ages	20	160

[fol. 284] A. C. Schnoy:

1 horses and mares, 3 yrs. old and over, common	30	30
4 grade cattle, 3 yrs. old and over	30	120

F. W. Schmidt:

4 horses and mares, 3 yrs. old and over, common	30	120
8 mules all ages, common	40	320
17 grade cattle 3 yrs. old and over	30	510
14 other hogs, all ages	20	280

"Exhibit M"

Assessment of All Taxpayers Whose Names Begin with S in Fairview Township, Henry County, Missouri, Showing All Livestock Returned by Each and Assessed Valuation thereof

H. W. Sanders:

Livestock	Aver. value per head	Total value
3 horses and mares 3 yrs. old and over, common	100	
6 grade cattle 3 yrs. old and over	210	
1 other hog	20	

W. M. Shelton:

Livestock	Aver. value per head	Total value
2 grade cattle 3 yrs. old and over	35	

Fred Shaffner:

2 horses and mares, 3 yrs. old and over, common	30	
5 grade cattle 3 yrs. old and over		180
1 other hog	20	

[fol. 285] L. R. Sanders:

3 horses and mares, 3 yrs. old and over, common	30	90
4 grade cattle 3 yrs. old and over	35	
3 other hogs all ages	50	

C. T. Short:

2 horses and mares, 3 yrs. old and over, good	30	
4 grade cattle, 3 yrs. old and over	35	
2 other hogs, all ages	10	

Bert Selvery:

4 grade cattle, 3 yrs. old and over	35	
1 other hogs, all ages	20	

A. W. Sanders:

3 horses and mares over 3 yrs. old	30	
2 grade cattle 3 yrs. old and over	30	
2 other hogs, all ages	15	

W. C. Studybaker:

2 horses and mares 3 yrs. old and over, common	30	
30 grade cattle 3 yrs. old and over		960
6 other hogs, all ages		15

R. F. Sanders:

1 horses and mares 3 yrs. old and over, common	30	30

[fol. 286] W. E. Simmons:
None.

J. H. Sanders:

Livestock	Aver. value per head	Total value
3 horses and mares, 3 yrs. old and over, common		100
5 grade cattle 3 years and over	30	150
2 grade cattle under 3 yrs.	25	50
1 hogs	20	20

J. A. Stevenson:

2 horses and mares, 3 yrs. old and over, common		60
9 grade cattle, 3 yrs. old and over	25	300
10 grade cattle, under 3 yrs		280
4 other hogs, all ages	10	60

Hazel Sanders:

3 horses and mares, 3 yrs. old and over, common		100
3 grade cattle, 3 yrs. and over		100
1 hog	20	20

L. M. Spurgeon:

1 mule, common	40	
2 grade cattle, 3 yrs. and over		40

F. E. Short:

1 grade cattle, 3 yrs. and over	40	

C. E. Strickland:

6 horses and mares, 3 yrs. old and over, common	35	
[fol. 287] 8 mules, all ages, common	35	
20 grade cattle, 3 yrs. old and over		650
7 other hogs, all ages		100

Livestock	Aver. value per head	Total value
Frank Straw:		
6 horses and mares, 3 yrs. old and over	30	
7 grade cattle, 3 yrs. old and over		240
5 other hogs, all ages		80
George F. Sanders:		
3 horses and mares, 3 yrs. old and over, common		
10 grade cattle 3 yrs. old and over	30	
5 other hogs, all ages		
W. M. Smith:		
1 grade cattle 3 yrs. old and over	40	
W. E. Scrogham:		
1 grade cattle, 3 yrs. old and over	40	
Richard Shouse:		
1 horses and mares 3 yrs. old and over, common	30	
2 mules, all ages, common	40	
1 grade cattle, 3 yrs. old and over	40	
Rush Straw:		
1 grade cattle 3 yrs. old and over	40	
[fol. 288] **W. W. Stewart:**		
2 grade cattle 3 yrs. old and over	70	
W. H. Smith:		
2 grade cattle 3 yrs. old and over	35	
1 other hogs	20	
Eliza Sampson:		
5 mules, all ages, common	30	
2 grade cattle, 3 yrs. old and over	35	70
5 grade cattle under 3 yrs.		150

Mr. J. W. DUNNING, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of defendant as follows:

Q. State your name?
A. J. W. Dunning.
Q. Where do you live?
A. Osage Township, at Brownington.
Q. What official are you in that township?
A. I have been township clerk and assessor.
Q. Are you now
A. Yes; the present time.
Q. How long have you been?
A. For four years the 3rd of April.
Q. Did you assess the property in your township in 1926?
A. Yes, sir.
Q. On what basis of value did you assess the property, according to your best judgment and ability, and knowledge of values?
A. Well, I assessed it at a hundred per cent, as near as I could, of what I thought it was actually worth in cash value.

[fol. 289] Cross examination.

By Mr. Rucker:

Q. Did you attend the meeting of the county court?
A. Yes, sir.
Q. Do you remember when it was?
A. No, I don't; something like April or May; in the spring; I don't remember what month it was.
Q. Of 1926?
A. Yes, sir.
Q. Did you use five dollars as a basis for your sheep?
A. Well, we used that as an average in the ordinary sheep, altogether; I know we did in part.
Q. Well, then you just assessed them at five dollars?
A. Yes, sir.
Q. That was talked over; discussed at the meeting, wasn't it?
A. Well, we talked that amongst ourselves, the assessors.

Q. I say, the assessors talked it over, and decided that that would be a fair valuation?

A. Yes, sir.

Q. And you used it, along with the other assessors of the county?

A. Yes, sir.

Q. Then you also talked over what you thought would be a fair average valuation for cattle, didn't you?

A. Yes, sir.

Q. And came to the conclusion from that—all of you discussing it—that thirty dollars a head would be a fair valuation for cattle three years old and over, didn't you?

A. Well, not exactly; we assessed them at the class they was mostly; of course used that as a kind—I don't think we assessed any lower than that.

[fol. 290] Q. Did you assess any higher?

A. Yes; we run higher; yes, sir.

Q. Do you remember whether you did, or not?

A. I think assessed some as high as sixty to seventy dollars a head.

Q. Individuals or bunches?

A. Bunches of cattle.

Q. Bunches?

A. Feeding.

Q. Feeding cattle?

A. Yes, sir.

Q. Were they finished cattle?

A. No; wasn't finished.

Q. What classification did they fall in?

A. Well, didn't call them above an average.

Q. What weight were they?

A. I don't know; never looked; but I remember going by them, my passing some along the road; they were maybe cattle that would weigh a thousand pounds; or a little over, or not quite so much.

Q. Well, did you assess the thousand pound cattle at sixty dollars?

A. Well, I don't know as I knew—I assessed them as close as I could to what I thought they were actually worth.

Q. What is your township?

A. Osage.

Q. Will you bring me the letter S, of Osage Township?

A. Yes, sir.

Q. Now, you didn't assess any sucking animals of any kind?

A. No, sir.

Q. Didn't assess any poultry of any kind?

A. No, sir.

[fol. 291] Q. What did you use as a basis in assessing hogs?

A. I think we based them on the market the 1st of June.

Q. Well, didn't you, as a matter of fact, use ten dollars a hundred?

A. I think that's what it was; yes, sir.

Q. Ten dollars a hundred—since you've refreshed your memory, don't you recall that you used ten dollars a hundred?

A. As near as I can tell, I did.

Q. That is your best recollection now?

A. My best recollection; I couldn't say, exactly.

Q. If you found a hog that weighed fifty pounds, you assessed it at five dollars?

A. Well, I don't know that I did.

Q. Well, didn't you?

A. Numbering the pounds—wasn't there a difference in the market on the different kinds of hogs?

Q. Talking about stock hogs?

A. I think I averaged them at ten cents on most kinds, as well as I remember.

Q. Did you assess breeding sows at a higher rate?

A. No, sir.

Q. At a lower rate?

A. Yes, sir.

Q. Of course, they don't have the same value as the other classes of hogs do, do they?

A. No, sir.

[fol. 292] Q. But they might have a greater local value?

A. Well, I don't know about that.

Q. A farmer doesn't ordinarily buy a breeding sow by the pound, does he?

A. I couldn't say.

Q. Did you ever have any experience farming?

A. Yes, sir.

Q. Did you ever grow any pigs?

A. Yes, sir.

Q. Did you ever buy any brood sows?

A. I expect I have; yes, sir.

Q. Well, you didn't buy them by the pound, did you?

A. I don't remember of buying them by the pound; no.

Q. Didn't you pay for the only ones you ever bought, or the only ones you know of anybody else buying, as much for a breeding sow as you would have paid for them by the pound?

A. Well, I think usually they did that, maybe.

Q. Now on the mules, what basis did you have?

A. I don't just remember; I think they had them at an average of fifty dollars.

Q. For all good mules?

A. No; I took a number of mules at a hundred dollars a head.

Q. You did?

A. Yes, sir.

Q. Did you ordinarily assess them at a hundred dollars a head?

A. Yes, sir; took a number of them over fifty, in the four years I've been on.

Q. That for your township?

A. Yes, sir.

[fol. 293] Q. Did you assess as many at a hundred dollars a head as you did at fifty?

A. No; I don't think I did.

Q. You think you priced above any township in this county; you have as fine mules as any in this county?

A. It has been going back now, anyway.

Q. Have you got any average priced mules in your township?

A. Might have been.

Q. You have mighty good mules?

A. Some good mules.

Q. Above the average, aren't they?

A. Yes, above the average a little.

Q. Are there too many good mules in that township to know really?

A. No, I don't think so.

Q. You don't think there are fifty of that good mules?

A. No, hardly fifty I don't think.

Q. Would you say 33 of them were there?

A. Somewhere near to 30.

Q. You assess milch cows, do you? What did you assess them at?

A. I don't just remember just exactly, I based that on what class that they were—kind of cows; I might have assessed a few head lower than thirty dollars a head; I don't remember exactly; it averaged somewhere around thirty dollars a head; I think it come up to that average or a little below.

Q. What was the character of the average cattle in your township?

A. Well, they are mostly common, there is no thoroughbred cattle.

[fol. 294] Q. You have no feeding cattle there—feeders?

A. A few bunches of feeders.

Q. Have you got finished cattle?

A. I don't think any of them were finished at that time.

Q Well, did you have any that were assessed for finished?

A. Don't know how they were assessed; I don't remember exactly whether I have any assessed at that time; had a few bunches of them.

Q. Do you remember how you assessed those cattle at in the assessment?

A. No; I don't; don't know just exactly how fat cattle were assessed at that time.

Q. Do you remember the highest assessment you placed on any cattle in your township?

A. I kind of think I assessed some up around sixty to seventy dollars; not sure; I think some of the lists will show that there was a bunch was taken up at around seventy dollars.

Q. How did you assess household furniture?

A. Well, just at my judgment of them; I assessed them at what I thought they were actually worth in money.

Q. What was the maximum assessment on household property?

A. Didn't have any maximum, particularly.

Q. Who owns the best mules in your township?

A. Mr. Snyder, I expect, owns about the best mules.

Q. What's his first name?

A. J. F. and W. O. Two of them.

[fol. 295] (59 lists of Osage Township, marked Exhibit N.)

Q. There is J. F. Snyder's assessment list, isn't it (showing)?

A. It would be in the name of Mrs. J. F. Snyder, then; or Mrs. J. F. Snyder's estate.

Q. Now that would be Mrs. J. F. Snyder?

A. I expect it would be; I don't know whose name I put it in.

Q. She had also a very fine stallion, didn't she?

A. Well, they have stallions, don't know whether it was fine; might have been fine in that day; none of them are fine now.

Q. What were the best mules worth down there at that time?

A. Well, I couldn't tell you; mules were awful dull at that time; never heard of any of them selling.

Q. Did they have any good horses or mares?

A. Nothing extra.

Q. Didn't they get these good mules out of the mares; didn't they have good mares down there, haven't they been growing mules there for years and years?

A. They had a few mares there; most of them were old, aged mares, practically of no value.

Q. Aged mares, worth little more than twenty dollars apiece, are they?

A. No, sir.

Q. The best mule you had wasn't worth more than a hundred dollars?

A. Well, not often, it wasn't.

[fol. 296] Q. You assessed six mules of yours, good, at a hundred dollars apiece?

A. Yes, sir.

Q. What kind of cattle was yours?

A. They would be the average grade of cattle, I think, as well as I remember.

Q. Had 73 head, and assessed them at $30, a head?

A. Yes, sir.

Q. What would they weigh?

A. I don't know; never looked at them.

Q. What would the hogs weigh?

A. I have seen them in the road; they might have weighed from 500 up to 900 or 1000 lbs.

Q. What did the hogs weigh?

A. I don't know; never looked at the hogs.

Q. How can you assess hogs at so much a hundred pounds, if you don't know how many pounds they weigh?

A. Well, taking my judgment and the fellow's judgment on that.

Q. How can you have a judgment, when you didn't see the hog?

A. Well, I would take the man's word; I knew about how they would look as if I was there on the spot.

Q. You have ten pure bred hogs here at ten dollars also?

A. Pure bred?

Q. Yes; ten pure bred hogs, ten dollars a head?

A. That must be on the wrong line.

Q. Look it over, and see if they are on the wrong line (showing list)? What would you say about that being on the wrong line?

A. Well, we never had any of the pure bred hogs; I never paid much attention to the line; because none of [fol. 297] them pure bred stuff there in the township.

Q. You don't think you had a hog that weighed over a hundred pounds, then?

A. I don't expect they would average over a hundred pounds.

Q. You don't think the ten hogs would average over a hundred pounds? Who had the best cattle in your township?

A. At that time I don't just remember—can't think.

Q. I'll ask you to refresh your memory, if W. O. Snyder didn't have the best cattle?

A. Well, I don't know; it might be he had; might be Bilderback or Grennell, or Parkses; I don't know; several of them did; W. O. Snyder I expect had some of the best, maybe.

Q. Did you assess all the tax payers down there alike—or tried to?

A. Well, I tried to assess them all as near alike accordingly as I knew how, at what their stuff was worth.

Q. Now I have had the County Clerk bring up, take the letter S, of the lists of persons whose names begin with S; I want you to look that list over, and tell the Court if you assessed a single solitary tax payer whose name begins with S, at over thirty dollars a head, except Snyder—

which is the only exception; and if you haven't got a lot of them assessed as low as fifteen and twenty dollars a head—cattle three years old and older?

By Mr. Wesner: I object to that, for the reason that it [fol. 298] isn't fair to the witness; it is only singling out from a small portion of the assessment of the property of the kind referred to in the township, and don't indicate, and cannot be evidence nor explain as to what the witness did when he assessed the inhabitants of the entire township and their property.

By Mr. Calvird: Further reason, there is nothing in evidence showing the actual value of the property assessed.

Overruled.

A. I think you will find as many as three or four other lists, different letters, that shows cattle listed up a lot higher; I don't know that there is any of them in S.

Q As many as three or four in all the alphabet?

A. Yes.

Q. And, outside of the three or four, they are thirty dollars, or less, aren't they?

A. Well, might be; I don't know exactly.

Q. Well, will you say they are not?

A. I don't remember exactly what the value was, back that far.

Q. All right—did you—will you look these over—will you look these lists over and tell us if you can, if these lists which I have handed you represent the lists of all the taxpayers in your township whose names begin with S, that own cattle?

A. I judge that's all of them; I don't know, exactly.

(Witness excused.)

[fol. 299] Mr. Ray Dooley, recalled by Mr. Rucker, testified as follows:

Q. I hand you the two packages or bundles of real estate and personal property assessment lists, and ask you if these are all of the assessment lists on file in your office as county clerk for Osage Township, in Henry County, Missouri,

showing the taxpayers resident in that township whose names begin with S and who made returns of property as of June 1st, 1926?

A. Yes, sir.

(Witness excused.)

By Mr. Rucker: Now I offer in evidence that part of the returns which have just been identified by the county clerk, so far as they show the number and price per head of grade cattle, three years old and over.

Marked Exhibit N.

By Mr. Wesner: Renew objection to this and to the introduction of the other assessment lists, and to all of this class of testimony, and ask that it be stricken from the record, for the reasons heretofore given.

By the Court: Yes; I understand. Overruled.

"EXHIBIT N"

Assessment of All Taxpayers Whose Names Begin with S in Osage Township, Henry County, Missouri, Showing All Live Stock Returned by Each and Assessed Valuations thereof

[fol. 300]

H. L. Stewart:

None.

Mrs. R. D. Smith Lewys:

None.

I. G. Smith:

None.

C. E. Shorthose:

Livestock	Aver. value per head	Total value
1 horses and mares 3 yrs. old and over, common	20	20

Conrad Schmidli, Sr.:

None.

Ed Slatterly:

None.

Mrs. Willis Scrogham:

None.

G. Sampson:

None

R. J. Shorthose:

None.

Mrs. J. T. Snyder:

Livestock	Aver. value per head	Total value
1 stallions	100	100
7 horses and mares, 3 yrs. old and over, common	40	280
3 asses and jennets	100	300
6 mules, all ages, good	100	600
10 purebred hogs, all ages	10	100
73 grade cattle, 3 yr. and over	30	2190

[fol. 301] W. H. Salsbury:

None.

Ed Sartin:

2 horses and mares, 3 yrs. old and over, common	30	60
4 mules, all ages, common		350
4 other hogs, all ages	20	80
11 grade cattle under 3 yrs.		275

R. R. Shoemaker:

4 horses and mares, 3 yrs. old and over, common	25	100
3 other hogs, all ages	20	60
5 grade cattle, 3 yrs. and over	30	150

W. D. Stanley:

Livestock	Aver. value per head	Total value
2 horses and mares, 3 yrs. old and over, common	35	70
4 grade cattle, 3 yrs. old and over	30	120
3 grade cattle, under 3 yrs.	20	60

Coon Schmidli, Jr.:

1 horses and mares, 3 yrs. old and over, common	40	40
3 mules, all ages, good	250	250
1 purebred hog	15	15
14 other hogs all ages	20	280
6 grade cattle, 3 yrs. and over	30	180

D. S. Stadler:

1 horses and mares, 3 yrs. old and over, common	30	30
1 mule, common	35	35
[fol. 302] 2 grade cattle, 3 yrs. and over	15	30
1 grade cattle under 3 yrs.	15	15
5 other hogs, all ages	4	20

Jake Schmidli:

2 horses and mares, 3 yrs. old and over, good.	50	100
3 mules, all ages, good		250
9 grade cattle, 3 yrs. and over	30	270
1 purebred hog	25	25

Henry Schmidli:

2 horses and mares, 3 yrs. old and over, common	50	100
3 horses and mares, under 3 yrs. old	25	75
2 mules, all ages, good		150
11 purebred neat cattle, all ages	30	330
6 purebred sheep, all ages	15	90

R. S. Stadler & Son:

Livestock	Aver. value per head	Total value
4 horses and mares, 3 yrs. old and over, common	25	100
2 mules, all ages, common	40	80
10 grade cattle, 3 yrs. and over	30	300
3 grade cattle, under 3 yrs.	25	75
12 other hogs, all ages	10	120

T. M. Scott:

3 horses and mares, 3 yrs. old and over, common	25	75
2 purebred neat cattle, all ages	30	60
4 grade cattle, 3 yrs. and over	25	100
2 purebred hogs, all ages	15	30

[fol. 303] Nelson Sherwood:

1 horses and mares, 3 yrs. old and over, common	20	20
1 grade cattle, 3 yrs. old and over	30	30

Geo. Salsbury:

1 horses and mares, 3 yrs. old and over, common	20	20
2 grade cattle, under 3 yrs.	30	60
2 other hogs, all ages	10	20

Mrs. Nancy Starbuck:

4 grade cattle 3 yrs. old and over	25	100
1 grade cattle under three years	25	25

G. R. Stevenson:

3 horses and mares, 3 yrs. old and over, common	30	90
4 grade cattle 3 yrs. and over	25	100

J. T. Smith:

Livestock	Aver. value per head	Total value
3 horses and mares, 3 yrs. old and over, common		90
1 grade cattle 3 yrs. and over	25	25
2 grade cattle under 3 yrs.	25	50
2 other hogs, all ages		25

H. S. Schlesinger:

2 horses and mares, 3 yrs. old and over, common	30	60
2 grade cattle under 3 yrs.	25	50

J. T. Shaffer:

1 horses and mares 3 yrs. old and over, common	30	30
[fol. 304] 1 mule, common	30	30
2 grade cattle, 3 yrs. and over	30	60

W. O. Snyder:

4 horses and mares, 3 yrs. old and over, common		140
5 mules, all ages, good	100	500
9 grade cattle, 3 yrs. and over	90	810
15 grade cattle under 3 yrs.	40	600
10 other hogs, all ages	20	200

H. L. Salsbury:

2 horses and mares, 3 yrs. old and over, common	30	60
1 grade cattle, 3 yrs. and over	25	25

A. J. Stewart:

3 horses and mares, 3 yrs. old and over, good	50	150
3 grade cattle, 3 yrs. old and over	30	90
2 grade cattle under 3 yrs.		25
9 purebred hogs, all ages	5	45
1 other hogs	20	20

B. F. Sanders:

Livestock	Aver. value per head	Total value
2 horses and mares, 3 yrs. old and over, common	25	50
1 grade cattle, 3 yrs. old and over	30	30
1 grade cattle under 3 yrs.	20	20

L. E. Smith:

4 horses and mares, 3 yrs. old and over, good	50	200
[fol. 305] 6 grade cattle, 3 yrs. and over	25	150
15 purebred sheep, all ages	5	75
3 purebred hogs, all ages	20	60

Earl Shepherd:

3 horses and mares, 3 yrs. old and over, common	33-1/3	100
2 grade cattle, 3 yrs. and over	25	50
2 other hogs, all ages	20	40

A. O. Starbuck:

3 horses and mares, 3 yrs. old and over, good	30	90
2 mules, all ages, common	50	100
6 grade cattle, 3 yrs. and over	20	120
11 grade cattle, under 3 yrs.	25	275

Clyde Smity:

3 horses and mares under 3 yrs. old	30	90
2 mules, all ages, good	50	100
2 grade cattle under 3 yrs.	30	60
9 other hogs, all ages	15	135

Jacob Schneider:

2 horses and mares, 3 yrs. old and over, common	25	50
5 mules, all ages, common	30	150
6 grade cattle, 3 yrs. and over	25	150
10 grade cattle, under 3 yrs.	20	200
18 purebred sheep, all ages	5	90
2 other hogs, all ages	10	20

[fol. 306] Mr. THOMAS B. PARKS, of lawful age, being produced, sworn and examined by Mr. Calvird, testified on behalf of the defendants as follows:

Q. State your name?
A. Thomas B. Parks.
Q. Where do you live?
A. Clinton, Henry County, Mo.
Q. How long have you lived in Henry County?
A. With the exception of three years, all my life.
Q. What is your official position in Henry County?
A. County surveyor; county highway engineer.
Q. How long have you been county surveyor and highway engineer of Henry County?
A. Been different times, one time 13 years, the last twelve years.
Q. In all 25 years?
A. In all 25 years.
Q. Are you also a member of the Board of Equalization of Henry County, Missouri?
A. Yes, sir; being county surveyor.
Q. And were you in the years 1926 and 1927?
A. Yes, sir.
Q. And from then up to the present time?
A. Yes, sir.
Q. And are now?
A. Yes, sir.
Q. As a member of the Board of Equalization, what are your duties?

By Mr. Rucker: Object to that; it calls for a legal conclusion; the statute states what it is; we admit its duties [fol. 307] are to equalize between the various tax payers of the county.

By Mr. Wesner: That's all that is necessary, I think.
By the Court: Well; let that admission stand.

Q. Did you meet with the Board of Equalization, Mr. Parks, to equalize the property assessments of Henry County, that was made as of June 1st, 1926?
A. Yes, sir.
Q. And how did you equalize the property, on what basis or what value, to the best of your ability, as a board?

A. Well, the assessors brought in the assessment lists and books that were made out, were brought in before the board, and there was assessments that should be valued at a hundred cents on the dollar, on personal and real estate, that we viewed, and in my opinion we equalized it as between the parties as near as possible—as we could.

Q. Tell His Honor whether it was the purpose and intention of the Board of Equalization to see that property, so far as they were able to, and according to the best of their ability and knowledge of values, and in an honest endeavor to arrive at it, at the real values in money, to assess the property of the county at a hundred cents—a hundred percent of its real value in money?

A. I think in general that's what it done.

Q. Sir?

A. I think that's what it done.

By the Court: He asked if that was your endeavor?

[fol. 308] A. Yes, sir; that was the endeavor.

Q. Were you present when the assessors of the county gathered.

A. I was.

Q. How many assessors are there in Henry County?

A. Nineteen township assessors.

Q. Do you remember about what the date was of this meeting?

A. My recollection is the first week in May. I think that is when it was.

Q. Were you present?

A. I was present.

Q. What direction was given there by the Board of Equalization, or any member thereof, to the assessors, relative to the assessment of property in Henry County?

A. The assessors have an organization in the county, and they met as their organization at that time; their chairman called the meeting to order, then asked for instructions of the county court; asked someone to make a talk to them, to tell them what they wished them to do, they referred to assessing property at a hundred cents; and a talk was made, and also explained about other things besides assessing at a hundred per cent; for instance, in taking the numbers of the land, clerical errors happen on the books some-

times and you sometimes get a double assessment by reason of that. These ideas were put before the assessors, to be careful not to make any errors in that manner; once and awhile you show up a double assessment.

Q. Who made that talk?

A. I made the talk; they asked me to make the talk for [fol. 309] them; I just simply told them to assess at a hundred cents; their true value—a hundred cents on the dollar of all the property; that was the statement made, and then along the line of seeing that they were careful not to make mistakes, and so on.

Q. In descriptions of real estate?

A. Descriptions of real estate; after the talk was made, they went ahead with their organization; elected a chairman for the ensuing year; elected a chairman, secretary, and minutes were kept of that meeting; and they made talks as to true property value, as to what—I don't remember whether an estimate was made upon property.

Cross-examination.

By Mr. Rucker:

Q. Your recollection is that that meeting was in May?

A. That's my recollection.

Q. You aren't positive about that?

A. I believe I am positive.

Q. You think you are positive?

A. Yes.

Q. They didn't have the meeting after they were paid for it, did they?

A. No, sir.

Q. It was some time before the warrants were issued to pay for the expenses?

A. Yes, sir.

Q. Then I will bring that book, and refresh your recollection?

A. I might be mistaken just as to the particular time; some years I know was May, possibly not every year; but I know some years that they had it in May.

Q. They are called about when?

A. Not sure; I think the May term of court. It might possibly have been in April.

[fol. 310] Q. April 14th, 1926, is when they were paid off?

A. 1926, was it?

Q. April 15th in 1927 and April 14th in 1925?

A. Some times they could have had it the week beginning in April, but most of the times they have it in May; that year it might have been in April.

Q. I will bring the book, and refresh your memory. You heard the assessors talking, didn't you, about how they were going to assess sheep?

A. Yes, sir.

Q. Did you hear them say they were going to assess them at five dollars a head?

A. That was to be the average

Q. That is, they were going to assess the average sheep of the county at five dollars a head?

A. That is for average sheep.

Q. They talked about assessing cattle at thirty dollars a head?

A. That was to be a basis for it.

Q. A basis of a thirty dollar average?

A. I couldn't say about that; I didn't understand they were all put down per head at thirty dollars; most generally assessed at thirty dollars—

Q. You didn't understand that—?

A. They might have been assessed at twenty five, or up to thirty five, or clear up to fifty or something else; that's the way I supposed they would look at it, as an average.

[fol. 311] Q. You did understand that they weren't going over $35, thirty-five to fifty didn't you?

A. No.

Q. If they had—you think they had cases of cattle worth $35 a head, and figured exactly at that did they have any cattle at $40 a head?

A. There may have been some at $40, or there may have been some at $50. I couldn't say about every one.

Q. How do you know, as a matter of fact, that the assessors did view all of the bunches of cattle?

A. Well, they would take the owner's word for them.

Q. They would take the owner's word for how many he has?

A. Yes; about the kind.

Q. About the kind?

A. About the kind; yes, sir.

Q. Do you understand they asked the owner about each individual?

A. Understand they ask about how many certain kinds there are.

Q. That's what I'm talking about; they took his word for it, that they were the kind of cattle he says.

A. Yes, sir.

Q. You have various classifications on your assessment list?

A. Yes, sir.

Q. We were talking now about grade cattle three years old and over?

A. Yes, sir. I don't know that they were all that kind of cattle; a man will have cattle, some would be over and some under; that would be the average of that kind.

Q. That would be the average of that kind?

A. Yes, sir.

[fol. 312] Q. You think that if they assessed ten head of them at $33 or $35 that wouldn't mean that they assessed them all at thirty dollars a head?

A. Not generally, no, sir.

Q. But you did understand from what the assessors said down there that they were going to take $30 as a basis?

A. Thirty dollars as an average.

Q. Now I call your attention to an entry on page 369 on Record Book Z, of the records of Henry County, Missouri, and to the particular order with reference to the payment of the township assessors of the several townships who attended the meeting of the board of equalization?

A. Well, whatever date that is, is when they were paid, of course; when they attended.

Q. What is the date?

A. April 14th.

Q. That's when they were paid, wasn't it?

A. No. I know it would be the second week then; because the first week of the board of equalization they wasn't here; that may be their attendance at the board of equalization; only that don't show that was when these assessors attended the board of equalization.

Q. You think the board of equalization paid it before you had this meeting?

A. No, sir.

Q. Before you paid it?

A. Yes, sir.

Q. You equalized before you made the assessment?

A. That was for the year previous.

[fol. 313] Q. Oh, for the year previous?

A. That meeting was for the year previous; that meeting was for the next year, 1927 taxes, we had the meeting in May, I am satisfied; the assessment in 1926, I think we had it in May; expect those warrants was after they attended the board of equalization.

By the Court: I don't think it is material, anyhow.

Q. Anyhow, it was before the 1st of June?

A. Yes, sir.

Q. At least two or three weeks before the first of June?

A. Yes; satisfied it was the first week of May.

Q. When you undertook to equalize the assessments following that, did you get at the market reports for the 1st day of June?

A. No, sir.

Q. Do you know whether any effort was made to determine the value of cattle, the average cattle, then, to know what cattle were worth on the market on the 1st day of June?

A. I would sooner take the assessor's judgment.

Q. Personally, you would rather take the assessor's judgment?

A. Yes, sir; perhaps fifty per cent of the stock in this county, or 95 per cent of it in the county—fifty per cent of it, wouldn't be a fair estimate of what it is worth in the county, and they are doing the assessing in this county.

Q. You understand there are various classifications of cattle on the market?

A. Sure, 17 to 23 classes.

[fol. 314] Q. They run all the way from finished cattle down to canners?

A. Yes, sir.

Q. Canners are just about as common as they get, isn't it?

A. Yes, sir.

Q. Explain how you find that the assessed valuation of cattle in this county wasn't equal to the value of canners,

on the 1st day of June, and that still all the cattle in this county had been assessed at a hundred per cent?

A. I would say that they were assessed at a hundred per cent of their value, according to the assessor's best judgment.

Q. Of course, his judgment might be mighty poor?

A. I don't know anything about that; the general average judgment of the assessors here.

Q. Just around the average judgment — just used average judgment?

A. Yes, sir.

Q. And he used an average valuation of all the stuff?

A. I don't know that canners was higher than they were assessed at; I don't know that.

Q. You know that they didn't assess any sucking animals?

A. Never has been done, in fifty years; to my knowledge.

Q. I say, you knew that they didn't do it?

A. I knew that; yes, sir.

Q. You knew that they didn't assess poultry?

A. No; I knew they hadn't for forty or fifty years; and didn't.

[fol. 315] Q. You know poultry is worth a great deal in this county?

A. Yes, sir; much more than a few years back.

Q. You knew that in 1926 it was worth a great deal.

A. Yes, sir.

Q. You knew you had a great many chickens in this county?

A. It hasn't been the custom, I don't think in this county or state to assess them. I don't think any county in the state assessed them.

Q. That's what you think about it; you don't know, do you?

A. I never seen any reports of poultry being assessed; never seen any returns; I seen the reports of the State Board, never seen any reports of poultry being assessed.

Q. You have seen reports occasionally, of "other live stock"?

A. Yes, sir.

Q. You don't know whether that includes chickens, or not?

A. Yes, sir.

Q. How do you know?

A. Because it states what they are.

Q. It states what the "other live-stock is?

A. Yes, sir.

Q. The report of the Board of Equalization?

A. They have classifications of mules, sheep, horses, cattle, and maybe a column there that says "other live-stock," that would pertain to goats, asses, genets—chickens aren't included, I know.

Q. You understand from the State Board of Equalization that chickens aren't included?

A. I understand they are not included.

[fol. 316] Q. Anywhere in the State?

A. No, sir.

Q. You say all "other stock" is classified, is it, in the State Report?

A. No, I said they were classified, but when it says, and "other livestock" it might pertain to asses, genets, goats.

Q. Have you any place on the list for asses, genets, goats?

A. Well, I don't think reaches to that, but I know it doesn't chickens.

Q. You know that?

A. Yes, sir; I know it doesn't chickens.

Q. There are asses and genets on here, and sheep and hogs?

A. Well, the "other livestock" generally—just about as many ducks as chickens.

Q. You notice, for the card publication identified, for instance, in Barry County, from the report of the State Board of Equalization of "other livestock" is assessed at $48494. Are you acquainted in Barry County?

A. No, sir.

Q. You know that in Platte County the "other livestock" is assessed at $10420.; and in Henry County "all other livestock" is assessed at $737?

By Mr. Calvird: I object, if Your Honor please, to an examination on what other livestock in other counties were, that includes other counties where you don't know what "the other live stock" is.

Q. I am handing you Journal of the State Board of Equalization of the State of Missouri, for the year ending

December 31st, 1927; and ask you if those figures aren't [fol. 317] there?

A. How do I know they are right; though?

By Mr. Calvird: Object to this cross-examination, for the reason it doesn't show what "the other property" is about which he is asking him; the witness says he isn't acquainted with the county, or the assessable property in it; and for the further and additional reason that it is immaterial and irrelevant, and has no tendency to prove or disprove any issue in this case.

(Witness excused).

COLLOQUY BETWEEN COURT AND COUNSEL

By Mr. Wesner: I think we are through; with the exception, we want to offer as defendant's exhibit No. 1, which said exhibit has been already introduced by plaintiff, and marked plaintiff's Exhibit C (See page 42 of this bill).

By Mr. Rucker: That's already in for all purposes; and we object to its being offered twice.

By Mr. Wesner: It is in evidence, but subject to our objection for the purpose for which it was introduced; they introduced it for another and entirely different purpose from our purpose. We objected to it as their evidence, but we want it in the record as our only exhibit.

By Mr. Rucker: When one party offers an exhibit the other party after objecting to it, can't offer it again, and encumber the record with it.

By the Court: You can use it for your purpose, better let it go in.

By the Court: I will let it go in.

[fol. 318] By Mr. Rucker: Plaintiff excepts. I want to ask the court to direct the stenographer, in making the transcript, if he makes one, to refer back to it, so that he doesn't copy it in the record twice; it is the same exhibit before offered.

Said Exhibit being certificate of the final finding of the State Board of Equalization.

(This was all the testimony offered).

By Mr. Rucker: I ask the court's permission to amend the petition to conform to the proof, by interlining, after the word "money" in the—or wherein the word "money" occurs in the fourth line from the end of the first paragraph in Paragraph VI, the following: "And the assessor, intentionally, systematically, deliberately and arbitrarily failed and omitted to assess certain species of personal property in Clinton Township, to-wit: poultry of every sort and suckling animals of every kind:" and the second interlineation occurs on the same line in the same paragraph of Paragraph VI, following the word "assessors" is as follows: "And said failure to assess said species of property, to-wit, poultry and suckling animals of all kinds." And the third interlineation is after the word "money" in the fifth line from the top of the second paragraph, of general paragraph VI, as follows: "And said failure to assess said species of property, to-wit, poultry and suckling animals of all kinds" and the fourth interlineation is in paragraph XI, following the word "money" where it occurs on the [fol. 319] seventh line of paragraph XI, the following: "And that said taxing authorities, intentionally, systematically, deliberately and arbitrarily failed and omitted to assess poultry of every sort, and suckling animals of all sorts in Clinton Township, and" that such action, etc.

Br. Mr. Wesner: We want to put an additional paragraph in our answer, in view of the amendment of the petition.

By Mr. Rucker: Let it be interlined.

By Mr. Wesner: We want to interline, to cover the denial of the amendment made in the petition.

By Mr. Rucker: All right; treat it as done.

Thereupon the court took the cause under advisement and on Feb. 4, 1929 rendered judgment for defendant.

And afterwards, to-wit, on March 4th, 1929 came the plaintiff and filed herein the following motion for a new trial:

[Title omitted]

MOTION FOR NEW TRIAL

Comes now the plaintiff in the above entitled cause and moves the court to set aside the decree in this cause and

grant plaintiff a new trial and as reasons therefor, plaintiff says:

[fol. 320] 1. The decree is against the law.

2. The decree is against the evidence.

3. The decree is against the weight of the evidence.

4. The court erred in holding that plaintiff was not entitled to recover and in finding the issues for the defendant for the reason that under the evidence offered by the respective parties, it appears that the taxing authorities in Clinton Township and in Henry County, Missouri, deliberately, intentionally, systematically and arbitrarily undervalued practically all property subject to an ad valorem tax in Clinton Township and Henry County, except the class of property owned by plaintiff which was assessed at 100% of its value, and that in so doing plaintiff was deprived of its constitutional right guaranteed by Section 3 of Article X of the Constitution of Missouri requiring uniformity of taxation upon the same class of subjects within the territorial limits of the authority levying the tax.

5. Because the court in finding for defendant and against plaintiff, deprived the plaintiff and the plaintiff's shareholders of their constitutional rights, guaranteed by Section 4 of Article X of the Constitution of Missouri, which requires to be taxed in proportion to its true value, in that the shares of stock owned by plaintiff's shareholders were [fol. 321] assessed at 100% of their value, and the property of all other taxpayers was deliberately, intentionally, systematically and arbitrarily assessed at less than 75% of its true value.

6. Because in finding for defendant and against plaintiff, the court deprived plaintiff of its constitutional right guaranteed by Section 1 of Amendment XIV of the Constitution of the United States, in that the finding of the court deprived plaintiff's shareholders of the equal protection of the laws and deprived them of their property without the due process of law, for the reason that the shares of stock owned by plaintiff's shareholders were assessed at 100% of their value, and that the property of other taxpayers was

deliberately, intentionally, systematically and arbitrarily assessed at less than 75% of its true value.

7. The court erred in finding for defendant and against plaintiff, because it affirmatively appears that the taxing authorities of Clinton Township, Henry County and the State of Missouri, deliberately, intentionally, systematically and arbitrarily failed and refused to include in the assessment list every species of property not exempted by law from taxation, as required by Section 12,766 R. S. Mo. 1919, in assessing practically all other property in Clinton Township, Henry County, Missouri, except the class to which the stock owned by plaintiff's shareholders belonged.

[fol. 322] 8. The court erred in finding for defendant and against plaintiff because it was made the duty of the taxing authority in Clinton Township in Henry County and in the State of Missouri, by Section 12,067 R. S. Mo. 1919, in assessing personal property to include every tangible thing being subject to ownership, whether animate or inanimate, and under the record in this case it affirmatively appears that the said taxing authorities deliberately, intentionally systematically and arbitrarily failed and refused to include sucking animals of any kind or character, or poultry of any kind or character in the tax lists of all persons in Clinton Township, and in Henry County, Missouri, who owned on the first day of June, 1926, either sucking animals or poultry, or both sucking animals and poultry, and it therefore appears that by such deliberate, intentional, systematic and arbitrary conduct on the part of the taxing authorities, personal property of great value belonging to taxpayers, other, than plaintiff's shareholders, was not listed for taxation at all, thereby resulting in a deliberate, intentional systematic and arbitrary discrimination against plaintiff's shareholders and a deliberate, intentional, systematic and arbitrary undervaluation of the personal property of taxpayers rather than plaintiff's shareholders.

9. The court erred in finding for the defendant against [fol. 323] the plaintiff for the reason that it affirmatively appears from the record that the taxing authorities of Clinton Township, of Henry County and of the State of Missouri, deliberately, intentionally, systematically and arbitrarily assessed sheep in Clinton Township and in Henry County

at a flat rate of $5.00 per head, for aged sheep, and deliberately, systematically, and arbitrarily eliminated entirely from the assessment sucking lambs of great value, when it affirmatively appears that an assessment of $5.00 per head on aged sheep, as of the first of June, 1926, only reflected 60% of the actual value of such aged sheep, and it further appears that the value of the lambs which were eliminated from the assessment were of greater value than the aged sheep included in the assessment, and that thereby and as a result of such deliberate, intentional, systematic and arbitrary assessment of the shares of stock of plaintiff's shareholders at 100% of the statutory value of said shares, resulted in and amounted to a violation of the rights of plaintiff's shareholders as guaranteed by Section 3 of Article X and Section 4 of Article X of the Constitution of Missouri, and of Section 1 of Amendment XIV of the Constitution of the United States of America.

10. Because the court erred in finding for the defendant and against the plaintiff for the reason that it appeared from the record in this cause that cattle three years old and over were by the deliberate, intentional, systematic and ar- [fol. 324] bitrary conduct of the taxing authorities in Clinton Township in Henry County and in the State of Missouri assessed at a flat rate of $30.00 per head and all suckling calves were deliberately, intentionally, systematically and arbitrarily eliminated from assessment, when, as a matter of fact, the cattle were worth on the first day of June, 1926, more than $60.00 per head, and the suckling calves were of great value, and that as a result of said deliberate, intentional, systematic and arbitrary undervaluation of said cattle of three years old and over, and the elimination of said suckling calves from said assessment list and the deliberate, intentional, systematic and arbitrary valuation of the shares of stock owned by plaintiff's shareholders at 100% of the value of said shares, the plaintiff's shareholders have been deprived of their rights guaranteed by Section 3 of Article X and Section 4 of Article X of the Constitution of Missouri and Section 1 of Amendment XIV to the Constitution of the United States.

Montgomery & Rucker, Attorneys for Plaintiff.

Which said Motion for New Trial was by the court overruled.

To which action of the court the plaintiff then and there excepted, and now excepts.

[fol. 325] And afterwards, to-wit, on March 4th, 1929, plaintiff filed herein the following Motion and Affidavit for Appeal:

[Title omitted]

APPLICATION FOR APPEAL

Comes now the above named plaintiff and makes application for an appeal from the judgment this day rendered in this cause to the Supreme Court of Missouri.

Montgomery & Rucker, Attorneys for Plaintiff.

STATE OF MISSOURI,
County of Henry, ss:

This affiant Paul McGeehan, being duly sworn, on his oath states that he is the President of the above named plaintiff, a corporation, and that he has authority to make this affidavit for and on behalf of the said corporation, and that the appeal in the above entitled cause is not made for vexation or delay, but because this affiant believes that the appellant is aggrieved by the judgment or decision of the court.

Paul McGeehan.

Subscribed and sworn to before me, this 4th day of March, 1929. J. W. Gray, Circuit Clerk.

[fols. 326-329] Which said appeal so prayed was by the court granted to the Supreme Court of Missouri, and plaintiff given until the time required by law, to file Bill of Exceptions herein.

ORDER SETTLING BILL OF EXCEPTIONS

And now comes the plaintiff herein, the Brinkerhoff-Faris Trust & Savings Co., and presents this, its Bill of

Exceptions in this case, and prays the court that same may be signed and made a part of the record in said cause, which is accordingly done this 5th day of April, 1929.

W. L. P. Burney, Judge of the 29th Judicial Circuit Court of Missouri.

Approved: Montgomery & Rucker, Attorneys for Appellant. Frederick F. Wesner, C. A. Calvird, Jr., N. B. Conrad, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 330] Minute entry of argument and submission May 9, 1929, omitted in printing.

IN SUPREME COURT OF MISSOURI

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Appellant,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of the Revenue within and for Henry County, Missouri, Respondent

Appeal from the Circuit Court of Henry County

JUDGMENT—June 29, 1929

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjude that the judment aforesaid, in form aforesaid, by the said Circuit Court of Henry County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution. (Opinion filed.)

[fol. 331] IN SUPREME COURT OF MISSOURI, EN BANC, APRIL TERM, 1929

No. 29549

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Appellant,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of the Revenue within and for Henry County, Missouri, Respondent

OPINION

Plaintiff (appellant here) is a corporation located at Clinton, in Clinton Township, in Henry County, Missouri, where it is engaged in the business of a bank and trust company. The defendant is the collector of revenue of Henry County. The action is a suit in equity, brought by the plaintiff as trustee for its shareholders, to restrain the defendant from collecting an excess of state and county taxes levied against the shares of its stock, alleged to be illegal. Henry County is under township organization.

The taxes complained of were levied for the year 1927, based on the 1926 assessment. The petition alleges that the assessor of Clinton Township assessed the shares of stock in plaintiff bank at 100 per centum of their true value in money, while he assessed all other property, real and personal, in his township (except sucking animals and poultry which he did not assess at all) at not exceeding 75 per centum of its true value, and that such values were [fol. 332] subsequently adopted by the State Board of Equalization in equalizing the valuation of each class of property among the respective counties of the State. The petition then proceeds:

"That the taxing authorities (the assessor and the State Board of Equalization) aforesaid deliberately, intentionally, systematically and arbitrarily valued and assessed the plaintiff's property as represented by its shares of stock at one hundred per centum (100%) of its true value in money and deliberately, intentionally, systematically and

arbitrarily undervalued and assessed all other property which is subject to an ad valorem tax in Clinton township, Henry County, and in the same class for the purpose of taxation, at only seventy-five per centum (75%) of its true value in money and the said taxing authorities intentionally, systematically, deliberately and arbitrarily failed and omitted to assess poultry of every sort and sucking animals of all sorts in said Clinton township and that such action by the taxing authorities was a discrimination against and a fraud upon the shareholders of the plaintiff bank and places an unjust and unequal of taxation upon the said shareholders and that that part of the taxes sought to be collected by the defendants from the plaintiff herein, which is based on valuation and assessment in excess of seventy-five per centum (75%) of the true value in money of the shares of stock in the plaintiff bank and which amounts to $662.06, is illegal and void because the said deliberate, intentional, systematic and arbitrary undervaluation of all other property and its assessment at seventy-five per centum (75%) of its true value in money and the said deliberate, intentional, systematic and arbitrary valuation of the property of the plaintiff, as represented by its shares of stock at one hundred per centum (100%) of its true value in money violates Section 3 of Article X of the Constitution [fol. 333] of Missouri requiring uniformity of taxation upon the same class of subjects within the territorial limits of the authority levying the tax and violates Section 4 of Article X of the Constitution of Missouri requiring that all property shall be taxed in proportion to its value and violates Section 1 of Article XIV of the Constitution of the United States in that it deprives the plaintiff's shareholders of the equal protection of the laws and deprives them of their property without due process of law."

The prayer is:

"That the court will forever restrain and enjoin the defendant from collecting or attempting to collect any part of the taxes assessed and levied against the shares of stock aforesaid which is based upon a violation and assessment in excess of seventy-five per centum (75%) of their true value in money."

All the allegations of the petition with respect to discrimination in the assessments are put in issue by the answer. The answer also avers that plaintiff had an adequate remedy at law for its alleged grievances, and that it was guilty of laches.

Plaintiff's evidence tended to show that the assessor of Clinton township and the assessors of the other eighteen townships in Henry County had a conference prior to June 1, 1926, for the purpose of agreeing upon the valuations at which they would assess the property in their respective townships that year; that following such conference, and pursuant to the understanding there had, domestic animals in the several townships of Henry County were assessed at from fifty to seventy-five per cent of their actual value, with the exceptions of sucking animals and poultry, which were not assessed at all; that the real estate was assessed at from sixty to seventy-five per cent of its value; and that the shares of stock of all the banks in the county were assessed at full value. The evidence is not to the effect that the assessors agreed to assess domestic animals at less than their full value, but simply that they fixed an arbitrary value: $5 per head for sheep; $30 per head for horses and cattle; and $50 per head for mules, which ranged from fifty [fol. 334] to seventy-five per cent of the market value of such animals respectively, as shown by the then current market reports. The evidence does not show that the values of real estate and shares of stock in banks were discussed or considered at the assessors' conference, but, according to plaintiff's experts, the former was in fact assessed at from sixty to seventy-five per cent of its actual value, while the latter was assessed at the full one hundred per cent.

On the part of defendant the assessor of Clinton township and the others who were called as witnesses testified that they assessed all the property in their respective townships at what they believed to be the full cash value; that, while they had agreed at their conference upon the value of the average domestic animal in each class in order that the assessments in the several townships would be uniform, they had in fact, in the making of the actual assessments, assessed all such animals at their full cash value; and that in not assessing sucking animals and poultry they were merely following a custom of long standing in

Henry County, and one which they were advised obtained throughout the State.

No protest of any kind on the part of plaintiff with respect to the alleged discrimination practiced against shareholders in the assessment of their stock for taxation was ever made to any of the taxing authorities of the county or the State, until long after the taxes based upon such assessments had become due: and then by tendering the county collector seventy-five per cent of such taxes.

The trial court, in a general finding, found the issues for the defendant, and dismissed plaintiff's bill. This appeal followed.

We held in Boonville National Bank v. Schlotzhauer, 298 S. W. 732, following eminent authority, that, if in the assessment of property for taxation in a given taxing district, those whose duty it was to make such assessment, delib- [fol. 335] erately, intentionally and systematically undervalued certain species of property, while assessing other species at full value, the assessment was not only constructively fraudelent but violatives of both the statute law of this State and the State and Federal Constitutions; that if such discrimination was practiced by the local assessor, though not participated in by either the county board of equalization or the State Board of Equalization, his fraud inhered in the assessment judgment; and that the property owner who was so discriminated against was entitled to relief in a court of equity through its injunctive process. And the doctrines of that case were either followed or referred to by us approvingly in Jefferson City Bridge Co. v. Blaser, 300 S. W. 778; Columbia Terminal Co. v. Koeln, 3 S. W. (2s) 1021 and State v. Dirckx, 11 S. W. (2s) 38.

It is doubtful whether the evidence in this case warrants a finding that the local assessor intentionally and systematically undervalued real estate and personal property listed with him, other than bank stock; but there can be no question but that his failure to assess sucking animals and poultry was both intentional and pursuant to system. Such failure must have been patent, not only to the county board of equalization, but to the State board as well, and as the latter board permitted the assessment as a whole to stand, it must be presumed that a like situation obtained with respect to every county in the state. If the owners of bank

stock are entitled to an abatement of a portion of their taxes because other property was undervalued, it would appear on principle that all taxpayers of the State should be entirely relieved, so far as the taxes for 1927 are concerned, because the owners of poultry were not taxed at all. It seems necessary that we rechart our course.

The respondent and the Attorney General, who filed a brief in the case as amicus curiæ, insist that the appellant, on at least two grounds, is not entitled to equitable relief: (1) It did not make timely use of available legal remedies which were in every respect adequate and complete; and (2) it was guilty of laches.

[fol. 336] 1. In the course of the opinion in the Schlotzhauer case, supra, it was said:

"One line of cases is where there is a charge of fraud, which entered into the very assessment judgment and created thereby unlawful discrimination as between the taxpayers of the same general class. The suit before us belongs to this class. The other class of cases is where by some mishap, oversight, or otherwise (excepting fraud) the taxpayer has been overassessed by the assessor. In these cases it has been ruled that the taxpayer should follow the statute and appeal, and that there is not remedy in equity."

This language carries the implication that an assessment judgment can be attacked for fraud in a court of equity, although available legal remedies have not been previously invoked. But the question under consideration, and the one in decision, was merely whether certiorari was an adequate remedy in such case. The broader question of whether a taxpayer who has suffered from a fraudulent discrimination in the assessment of his property was required to exhaust all available legal remedies before he was entitled to relief in equity was not raised or passed on.

The English doctrine is that, as fraud was one of the "ancient foundations" of equity jurisdiction, a court of equity has and retains (except where prohibited by statute) jurisdiction to relieve against every species of fraud, notwithstanding any subsequently acquired power of law courts to grant complete relief. This doctrine was followed in many of the earlier American cases, including some de-

cided by this court. [See Potter v. Herring, 57 Mo. 184.] But later American cases have not blindly followed the doctrine. No hard and fast rule is deducible from them: they hold in a general way, however, that the exclusive jurisdiction to grant equitable relief will not be exercised in any case where the legal remedy, either affirmative or defensive, which the injured or defrauded party might obtain would be adequate, certain and complete. [Perkins v. Railroad, 143 Mo. 4513, 45 S. W. 260; Vandeventer Trust Co. v. Western Stoneware Co., 197 Mo. App. 132, 193 S. W. 995, and cases there cited; 10 R. C. L. p. 318, §62, note 9; 34 C. J. p. 438, §687, note 61.] In any event such rule should, [fol. 337] on grounds of public policy, be rigorously applied in attacks on assessment judgments.

The county board of equalization was powerless to grant appellant relief [State v. Dirckx, supra]; the statute did not, and does not, provide for appeals to the State Board of Equalization or hearings before it, the hearings it does give being merely matters of grace. Wherefore appellant says that it was remediless save in a court of equity. Appellant nowhere mentions in its brief and argument the State Tax Commission: the Commission was not referred to in the Schlotzhauer case or in the cases following it. If that tribunal is without jurisdiction to administer relief where fraudulent assessments have been made, such as are charged to have been made in this case, then it must be true, as appellant asserts, that it has no remedy except in a court of equity.

Section 12847, R. S. 1919, confers upon that body, "subject to the right of the State Board of Equalization finally to adjust and equalize the values of real and personal property among the several counties of the State," the power:

"(1) To have and exercise general supervision over all the assessing officers of this state, over county boards of equalization and appeal in the performance of their duties, and to take such measures as will secure the enforcement of the provisions of this article, and all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

"(2) To confer with and advise assessing officers as to their duties under this article and all other laws concerning

revenue and taxation, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this article or of the revenue and taxation laws. * * *

[fol. 338] "(3) *To receive all complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist.* (Italics ours.)

* * * * * * *

"(6) * * * Said commission shall also have all powers of original assessment of real and personal property now possessed by any assessing officer, subject only to the rights given by the constitution to the state board of equalization.

"(7) To cause to be placed upon the assessment rolls omitted property which may be discovered to have, for any reason, escaped assessment and taxation, and to correct any errors that may be found on the assessment rolls and to cause the proper entry to be made thereon.

"(8) To raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or personal property of any individual, copartnership, company, association or corporation: Provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given to such individual, copartnership, company, association or corporation as provided in section 12848."

Section 12848 provides:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized

agent or representative thereof, and in case it shall appear [fol. 339] to the commission after such investigation, *or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law,* the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be one, at least five days before the time at which said assessor is required to appear; or, where practicable, notice by mail may be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall be served on the assessing officer at least three days before he is required to appear with said roll. The commission, or any member thereof, or any duly authorized agent, shall appear at the time and place mentioned in said order, and the assessing officer, upon whom said notice shall have been served, shall also appear from said assessment roll. The commission, or any member thereof, or any duly authorized agent thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing. In case said commission, or any member or agent thereof who is acting in said review, shall determine that the assessments so reviewed are not made according to law, he or [fol. 340] they shall, in a column provided for that purpose, place opposite said property the lawful valuation of the same for assessment. As to the property not upon the assessment roll, the said commission, or member or agent thereof, acting in said review, shall place the same upon

said assessment roll by proper description and shall place thereafter in the proper column the value required by law for the assessment of said property. The commission shall also spread upon said roll a certificate signed by each member officiating at the proceeding, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the county board of equalization. His claim shall be presented to and paid by the proper officer of the political subdivision, or municipality, of which he is the assessing officer, in the manner as his other compensation is paid. The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization. When any property has been reviewed, assessed and valued by the commission as herein authorized, such property shall not be assessed or valued at a lower figure by the local assessing or equalizing officer for the year the assessment is made."

From said Sections 12847 and 12848 it appears: The State Tax Commission is given general supervision over all the assessing officer- of the State, with power to enforce its orders; it has all the powers of original assessment; it may receive complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, and apply the proper corrective measures; it can raise or lower the assessed valuation of real or personal property either in specific instances or by class; and it has authority, on the complaint of any taxpayer and after the various assessment rolls have been passed upon [fol. 341] by the several boards of equalization, but before the delivery of the tax rolls to the proper officers, for collection, to hold hearings for the purpose of determining whether any property subject to taxation has been omitted from the assessment rolls and whether any property thereon has been improperly valued, and to make such changes with respect thereto as shall be necessary to make the assessment rolls conform to the facts as found by them.

It is no doubt true that the State Tax Commission was not intended to supplant local assessing officers and boards,

but very clearly it is given full and adequate power, not only to supervise, but to review, their work, and where it finds assessments which were not made conformably to law to revise them—and this by inserting where necessary, after a hearing, its own valuations in lieu of those made by the local authorities. It is also true that its revision of the assessments as made by county assessors and boards, in so far as it affects the equalization of the values of property among the respective counties of the State, whether such revision be made before or after the State Board has acted, is subject to the approval of that Board. And in this connection it should be said that, even though the action of the State Board of Equalization in the first instance completes the assessment judgment, that fact does not preclude a revision of such judgment by the Tax Commission, subject to the Board's final approval. The technicalities relating to judgments of courts are without application.

In Laclede Land & Improvement Co., v. State Tax Commission, 295 Mo. 298, it was said that, if the Tax Commission Act was intended to confer upon the body created by it the powers which in preceding paragraphs we have held the Commission possesses, the Act is violative of Section 10, Article IV of the Constitution. The constitutional provision referred to is as follows:

"The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof for county, city, town or other municipal purposes, *but may, by general laws, vest in the corporate authorities thereof the power to* [fol. 342] *assess and collect taxes for such purposes.*"

It was held in the case just mentioned that the italicized portion of the section clearly embodies the idea that the assessment of local property should be made by local authorities, and not by any state agency which might be created by the Legislature. But it is plain from the section as a whole that its main objective is to prohibit the General Assembly from imposing upon the several political subdivisions of the State, their inhabitants or their property, taxes for purely local purposes: the italicized portion is subsidiary: it merely indicates how taxes for such purposes may be assessed and collected. The assessment of

property for taxation, though carried on simultaneously by county officers and boards, is for the purpose in part of affording a basis for the levy of a state tax: to that extent it is a state assessment. As such it is subject to the jurisdiction of the State Board of Equalization, a state agency created by the Constitution itself. The very fact that the Constitution sets up such a tribunal as the State Board of Equalization demonstrates that it was not the intent of the framers of that instrument that the assessment of property for taxation should be beyond the pale of state supervision and control. Laclede Land & Improvement Co. v. State Tax Commission, supra, to the extent that it is in conflict with the views hereinbefore expressed, is overruled.

Appellant's grievance is not that its property was overvalued, but that it was discriminated against through the undervaluation, and omission in part, of other property subject to taxation. Had it at any time before the tax books were delivered to the collector filed complaint with the State Tax Commission, that body, in the proper exercise of its jurisdiction, would have granted a hearing and would have heard evidence with respect to the valuations complained of; and if the charges contained in the complain had been found to be true, the valuations placed on [fol. 343] its property would have been lowered, or that on other property raised, the property omitted from the assessment roll would have been placed thereon, and the discrimination complained of thereby removed. The remedy provided by statute is adequate, certain and complete.

2. To permit taxpayers throughout the State who feel aggrieved through alleged discriminatory assessments of their property to stand silently by until after the taxes have become due and are pressed for collection and then resist their payment by injunction would produce an intolerable condition. The collection of the revenue would be so obstructed that both State and local governments would be seriously crippled, if nothing more. Had appellant made timely complaint to the State Tax Commission, the Commission and the State Board of Equalization, to which it renders an auxiliary service, would, it must be presumed, have at once corrected the alleged discrimination in the assessments, and the state, county and the road and school

districts would have received punctually, and without abatement, the revenue accruing to each of them respectively under the law. It was clearly guilty of laches in not so doing.

We do not recede from any of the positions taken in the Schlotzhauer case: we merely supplement its holdings by the further holding that a taxpayer who is aggrieved by a fraudulent assessment of his property is not entitled to relief in a court of equity until he has first exhausted the remedies afforded by the Statute.

For the reasons herein appearing the judgment of the circuit court is affirmed. All concur except Atwood, J., not sitting.

William T. Ragland, J.

[fols. 344-352] Petition for rehearing, covering nine pages, filed July 8, 1929, omitted from this print. It was overruled and nothing more by order August 2, 1929.

[fols. 353-355] Suggestions in opposition to rehearing, filed July 18, 1929, omitted in printing.

[fol. 356] In Supreme Court of Missouri

[Title omitted]

Order Overruling Motion for Rehearing—Aug. 2, 1929

Now at this day, the Court having seen and fully considered appellant's motion for a rehearing herein, doth order that said motion be, and the same is hereby overruled.

[fol. 357] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 358] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—January 6, 1930

On further consideration, it is now here ordered by this Court that the order of December 2, 1929, denying the petition for a writ of certiorari herein to the Supreme Court of the State of Missouri, be, and the same is hereby, revoked, and the petition is now granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,595. Missouri Supreme Court. Term No. 464. Brinkerhoff-Faris Trust & Savings Company, petitioner, vs. Walter O. Hill, treasurer and ex-officio Collector of Henry County, Missouri. Petition for writ of certiorari and exhibit thereto. Filed October 28, 1929. File No. 34,595.

NO. 464

OCT 28
CHARLES ELMO

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY, PETITIONER,

VS.

WALTER O. HILL, TREASURER AND EX-OFFICIO COLLECTOR IN AND FOR HENRY COUNTY, MISSOURI, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI, ASSIGNMENT OF ERRORS AND BRIEF IN SUPPORT OF PETITION.

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

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Section 12848 20

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PETITION FOR WRIT OF CERTIORARI, ASSIGNMENT OF ERRORS AND BRIEF IN SUPPORT OF PETITION.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Brinkerhoff-Faris Trust & Savings Company, a corporation, presents this, its petition and prays that a writ of certiorari may be granted directing the Supreme Court of the State of Missouri to certify to this Honorable Court, for its review and determination, the case of *Brinkerhoff-Faris Trust & Savings Company, Appellant,* v. *Walter O. Hill, Treasurer and Ex-officio Collector of the Revenue within and for Henry County Missouri, Respondent,* being

cause No. 29,549 of said Supreme Court of Missouri, and for reasons for this application shows this court that on the 26th day of April, 1928, your petitioner instituted this action in the Circuit Court of Henry County, Missouri, against Walter O. Hill, Treasurer and *ex-officio* Collector of Revenue of Henry County, Missouri, wherein the petitioner sought to enjoin the collection of 25 per cent of the taxes assessed and levied against the shares of stock in the petitioner corporation for the year 1927 upon the ground that the taxing authorities of Clinton township and Henry County, Missouri, deliberately, intentionally, systematically, and arbitrarily assessed the plaintiff's property, as represented by its shares of stock as of June 1, 1926, at 100 per cent of its true value in money and undervalued and assessed all other property which was subject to an *ad valorem* tax in said township at not to exceed 75 per cent of its true value in money, and deliberately, intentionally, systematically, and arbitrarily failed and omitted to assess certain classes of property in Clinton township of great value, to-wit, poultry of all kinds and sucking animals of all kinds, and that such action of the taxing authorities was a discrimination against and a fraud upon the plaintiff and its shareholders and placed an unjust and unequal burden of taxation upon them and was a denial to them of their constitutional right to have their property taxed uniformly with other property in the same class for purposes of taxation, and was a denial of plaintiff's rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States,

which provides that no state shall deprive any person of life, liberty or property without due process of law or to deny to any person within its jurisdiction the equal protection of the laws. The petition also stated that the plaintiff had tendered to the defendant 75 per cent of the taxes assessed and levied against its stock, which the collector refused to receive and that the plaintiff now tenders to defendant and continues to tender to the defendant and that the plaintiff had no complete and adequate remedy at law; that its right of appeal from the assessor to the County Board of Equalization could not have afforded it any relief whatever for the reason that the County Board of Equalization was wholly without power to fix the amount of the assessment because the amount of the assessment had already been finally fixed and adjudged by the State Board of Equalization on April 1, 1927, before the County Board of Equalization could lawfully meet for the purpose of equalizing the taxes of the year 1927; that the plaintiff had no right to appeal from the assessment judgment as finally entered by the State Board of Equalization to any other court or tribunal and that the plaintiff's right to a writ of certiorari against the State Board of Equalization, whereby it might have the bare record of the State Board of Equalization sent to a court for review did not afford this plaintiff any remedy whatsoever because the discrimination of which it now complains does not appear and could not be made to appear upon the record of the State Board of Equalization.

The petition further alleged that the defendant had on April 5, 1928, instituted a suit in the Circuit Court of Henry County, Missouri, against this plaintiff as defendant for the recovery of the taxes so assessed and levied as aforesaid against its shares of stock for the year 1927, and that the plaintiff's right to have 25 per cent of the said taxes declared null and void on the ground of the deliberate, systematic, intentional, and arbitrary discrimination aforesaid is not available to the plaintiff as a partial defense to said action or by cross bill therein and that the plaintiff can only avail itself of its said right in an independent action brought for the purpose of attacking the said assessment; that unless plaintiff is granted the relief sought in the petition it will be compelled to pay the said illegal tax and that after the said taxes shall have been paid by the plaintiff, its shareholders are wholly without any remedy at law or in equity.

The plaintiff further alleged and it was admitted that Henry County, Missouri, was under township organization.

The plaintiff prays that the court will restrain and enjoin the defendant from prosecuting the said action at law for the recovery of the taxes until the court shall finally determine this present action and for that purpose will issue its temporary restraining order and, if this present action shall end in a judgment for plaintiff, that the court will forever restrain and enjoin the defendant from collecting or attempting to collect any part of said taxes in excess of seventy-five percentum thereof, and for such other and further

relief as the plaintiff might be equitably entitled to receive.

The answer (Abstract of the Record, page 16) after denying the allegations of the petition, alleges that the plaintiff is guilty of laches in not availing itself of the right given to it by law under Articles 3 and 5 of Chapter 110 of the Revised Statutes of Missouri of 1919 (which relate to the County Board of Equalization and the State Board of Equalization), and alleges that the plaintiff is estopped from maintaining its action because of its failure to appear before the County Board of Equalization or the State Board of Equalization and is estopped because the judgment of the State Board of Equalization fixing the values complained of is a final judgment.

The plaintiff's reply was a general denial.

Your petitioner further shows that at the trial of the above entitled cause in the Circuit Court of Henry County, Missouri, the plaintiff showed that the total assessed value of the stock of all of the banks and trust companies of the county as of June 1, 1926, as found by the assessor, was $681,140.00 (p. 40) and that the assessment of plaintiff's shares of stock was $144,660.00 and that all of said assessments were made at 100 percentum of the actual value in money. This evidence was not disputed.

Plaintiff's evidence showed and it was not denied that all the township assessors, including the assessor of Clinton township, intentionally, systematically, deliberately, and arbitrarily omitted to assess any poultry of any kind (pp. 161, 199, 227, 233, 241) and that the

value of chickens (p. 60) in Henry County was between $400,000.00 and $500,000.00 on June 1, 1926 (pp. 178, 181, 183); and also that it was the deliberate policy not to assess any sucking animals (pp. 240, 198, 227, 64, 161) and that sucking lambs on June 1, 1926, were worth more than all other sheep in Henry County (pp. 164 and 165). This was undisputed. Plaintiff showed by competent and well qualified experts, who studied every transfer of real estate in Henry County made in the calendar year of 1926, that the assessed valuations of properties conveyed during that year were not over 60 per cent of the actual considerations for the transfers (pp. 83 and 84) and that real estate in Clinton township was assessed at not to exceed 75 per cent of its true value in money (p. 83). This evidence was uncontradicted. The defendant admitted under oath that merchants' stocks of merchandise in Clinton township in which is located the biggest city in Henry County, were assessed as of June 1, 1926, at about 75 per cent of their true value (p. 50). The plaintiff's evidence showed that sheep in Henry County were assessed at an average value of $4.59 per head, but were worth on an average more than twice that much; that neat cattle were assessed at $29.77 per head, but were worth more than twice that much (pp. 58 and 59); that hogs were assessed at $13.91 a head which was about two-thirds their value (p. 59); that horses were assessed at an average of $31.66 a head, which was not 60 per cent of their value (p. 67) and that mules were assessed at $47.69 a head, which was not half their value (p. 64). This evidence was uncontradicted.

Plaintiff's evidence showed that household goods were assessed at from 10 per cent to 50 per cent of their actual value.

The defendant's testimony consisted wholly of the testimony of the judges of the county court, all of whom were farmers, the assessor of Clinton township, the county surveyor, who is a member of the County Board of Equalization, and several assessors of other townships. The members of the County Board of Equalization testified that they told the assessors to assess everything at full value and that they also tried to equalize all property at 100 per cent, but that the assessors did not assess any sucking animals of any sort and did not assess any poultry.

The assessor of Clinton township, who made the assessment in question, testified that he assessed property at as near 100 per cent as he knew how (p. 238); that his method of assessment was to follow a schedule "already drawed" (p. 238) by which they tried to make an average to follow for different kinds of stock. He didn't go to see any property (p. 239), but left the assessment list with the taxpayer for him to fill out, sign and return to him. He didn't put the taxpayer under oath (p. 239). He told the taxpayers that they didn't have to list sucking animals (p. 240). He didn't assess any chickens (p. 241). He and eighteen other township assessors met with the county court some time before June 1 and agreed that $5.00 would be a fair rate on sheep (p. 241) and that $30.00 would be a flat rate on grade cattle three years and over (pp. 244 and 247).

The proof of the fact of the discrimination was overwhelming and the evidence was uncontradicted that certain entire classes of property were intentionally omitted from assessment and that the assessment of all kinds of livestock was made according to a schedule of flat rates or average rates which was made weeks before June 1 and that the average rates were about one-half as high as they should have been.

A comparison of the total assessed values of the several classes of livestock and farm machinery in Henry County on June 1, 1926 (p. 41) with the values of livestock and farm machinery in Henry County on June 1, 1925, as shown by the Federal Census of Agriculture (p. 178) practically tells the story.

	Total assessed value in Henry County June 1, 1926 (p. 41).	Total value in Henry County according to Federal Census of Jan. 1, 1925.
Horses	$248,455.00	$464,078.00
Mules	170,655.00	280,856.00
Cattle	721,018.00	1,042,057.00
Sheep	21,321.00	56,426.00
Swine	244,468.00	541,323.00
Chickens	Nothing	426,482.00
Other livestock	850.00	20,582.00
Farm implements	168,404.00	901,272.00

The court below found for the defendant. Petitioner filed motion for new trial in due time and the same was overruled and petitioner appealed to the Supreme Court of Missouri. The motion for new trial raised the questions under the Federal Constitution

which are here involved. The Supreme Court of Missouri on June 29, 1929, rendered a judgment affirming the judgment of the court below. Within the time provided by law and the rules of the Supreme Court, petitioner filed a motion for rehearing, which motion raised the questions herein raised and was overruled on August 2, 1929, at which time the judgment of the Supreme Court of Missouri became a final judgment. This petition is now filed within three months after said judgment became final.

Your petitioner further shows that the said Supreme Court of Missouri is the court of final appellate jurisdiction in the State of Missouri in causes of this character.

Your petitioner further shows that a Federal question is involved.

Your petitioner further shows that in this cause your petitioner set up and claimed a right, privilege or immunity under the Constitution of the United States and particularly under Section 1 of the Fourteenth Amendment of the same which forbids any state to deny to any person the equal protection of the laws and to take any person's property without due process of law and that the decision of the Supreme Court of Missouri contravenes petitioner's rights in these respects, as follows:

(1) The effect of the decision is to hold that your petitioner has no remedy except to have the property which is assessed below its true value (consisting of the great mass of all property within the taxing district), raised rather than to have the assess-

ment of petitioner's own property, which is assessed at its true value, reduced to the average level of other property.

Sioux City Bridge Co. v. *Dakota Co.*, 260 U. S. 441, l. c. 446.

This point is further elaborated in the supporting brief.

(2) The decision of the court in this cause rendered August 2, 1929, holding that the petitioner had a full, adequate, and complete legal remedy in 1927 by appealing to the State Tax Commission, thereby overruling a decision which it handed down in 1922 and which continued to be the law of Missouri until the decision in the present case, denies to plaintiff due process of law because it comes too late to enable your petitioner to appeal to the State Tax Commission for redress against the discriminatory tax and leaves your petitioner without any remedy whatever in the courts for this infringement of its constitutional rights. If your petitioner had no right to appeal to the State Tax Commission before it had instituted the present action, then there was no tribunal provided by the law of the State of Missouri to which it could go for protection against an intentionally discriminatory assessment which deprived it of the equal protection of the laws.

This point is further elaborated in our supporting brief.

Your petitioner files herewith a transcript of the record in the case including the proceedings had in the Supreme Court of Missouri and ten copies of the record as printed below.

Wherefore, in view of the premises, your petitioner prays that this Honorable Court will grant its writ of certiorari directed to the Supreme Court of the State of Missouri requiring that the complete record in said cause in said court and its judgment thereon, together with the motion for rehearing and the ruling of said court thereon, be certified to this court and that this Honorable Court will thereupon proceed to correct the errors complained of and reverse the judgment of the said Supreme Court of the State of Missouri and give to your petitioner such other and further relief as the nature of the case may require and as may seem proper to the court in the premises.

Brinkerhoff-Faris Trust and Savings Co.,
Petitioner.

By Roy W. Rucker,
John Montgomery, Jr.,
Lee Montgomery,
Its Attorneys.

State of Missouri, County of Pettis, ss.

Roy W. Rucker, being duly sworn, upon his oath deposes and says that he is one of the counsel for petitioner, Brinkerhoff-Faris Trust & Savings Company, a corporation; that he has read the foregoing annexed petition and knows well the contents thereof; that he has also carefully read and studied the transcript of record and proceedings in the case at bar; that the matters in said petition are in the judgment of this affiant duly supported in and by said transcript of record and proceedings and that he knows of the

above proceedings had and that he verily believes the facts stated in said petition are true.

Ray Lauder

Subscribed and sworn to before me this 17th day of October, 1929.

My commission expires Nov. 21, 1931.

(Seal) Ona Mae Palmer

Notary Public within and for
Pettis County, Missouri.

In the Supreme Court of the United States, October Term, 1929. Brinkerhoff-Faris Trust & Savings Company, Petitioner, vs. Walter O. Hill, Treasurer and ex-officio Collector in and for Henry County, Missouri, Respondent.

ASSIGNMENT OF ERRORS.

I.

The decision of the Supreme Court of Missouri in this cause contravenes the appellant's right under Section 1 of the Fourteenth Amendment of the Constitution of the United States to the equal protection of the laws by refusing to grant petitioner any relief against an assessment which was intentionally, deliberately, systematically, and fraudulently discriminatory against the petitioner.

II.

The Supreme Court of Missouri erred in refusing to grant such relief to the petitioner against such discriminatory assessment for taxes by holding that the petitioner had no right to come into a court of equity for injunctive relief against the discriminatory part of the assessment and tax because the petitioner had not first appealed to the State Tax Commission for redress of its grievances when, under the law at the time when said appeal must have been taken, Article IV of Chapter 119 of the Revised Statutes of Missouri of 1919, which purported to grant a legal remedy to petitioner against such discriminatory assessment and tax, was held to be unconstitutional in so far as it was

intended to give the State Tax Commission any power or jurisdiction to grant redress against such discriminatory tax. The effect of such decision was to deprive the petitioner of an opportunity to be heard in defense of its constitutional rights before any tribunal or administrative body and amounts to a denial to the petitioner of due process of law guaranteed to it under the Fourteenth Amendment of the Constitution of the United States.

III.

The Supreme Court of Missouri erred in refusing to grant relief to the petitioner against such discriminatory assessment of taxes on the ground that the petitioner must first exhaust his legal remedy, that is, by appealing to the State Tax Commission, although the State Tax Commission has no legal right or authority to lower the assessment of petitioner's property which is admittedly assessed at its full value in money. Therefore, the State Tax Commission could only grant relief by placing upon the assessment rolls all of the property deliberately omitted therefrom and by assessing such omitted property and the great bulk of other property which was under-assessed, at their full value in money. This is equivalent to a holding that the petitioner's remedy is not in a court of equity, but by a proceeding before a tribunal for the purpose of getting the assessment of other property raised up to the level of the assessment of petitioner's property.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

The only possible relief which the State Tax Commission could have granted to the petitioner, if the petitioner had applied to it for redress, would have been for the State Tax Commission to have placed upon the assessment rolls the property which had been intentionally omitted therefrom by the other assessing officers and by assessing the same and also all underassessed property, which embraced practically all other property in the taxing district, at its full value in money.

The powers of the State Tax Commission are conferred by Article IV of Chapter 119 R. S. Mo. 1919 which, among others, contains the following provisions:

Section 12,847. It shall be the duty of the Commission and the Commission shall have power and authority, subject to the right of the State Board of Equalization, finally to adjust and equalize the value of real and personal property among the several counties of the state, as follows:

(1) To have and exercise general supervision over all the assessing officers of the state, over county boards of equalization and appeal in the performance of their duties and to take such measures as will secure the enforcement of the provisions of this article and all the properties in this state liable to assessment

for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

(3) To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist.

(7) To cause to be placed upon the assessment rolls omitted property which may be discovered to have, for any reason, escaped assessment and taxation * * *.

(8) To raise or lower the assessed valuation of any real or personal property of any individual * * * or corporation; provided, etc.

All of the statutes of Missouri relating to the assessment of real and personal property of every character provide that all property shall be valued and assessed according to its true value in money.

Sections 12802 and 12775.

The State Board of Equalization, whose approval is necessary to give validity to any Act of the State Tax Commission is only given authority to assess property at its true value in money.

Section 12855 confers upon the State Board power only to increase the valuation of property which it believes to be valued below its real value in money by such percentum as will increase the same to its true value or to deduct from the valuation of property

deemed to be valued below its real value in money such percentum as will increase the same in each case to its true value.

There is nothing in the entire statutory scheme for the assessment of property in Missouri which authorizes any assessing officer or body to assess any property at less than its true value in money.

The State Tax Commission had no legal right or power to assess our stock at less than its admitted true value in money. Therefore, it could only grant redress by raising everything else up to the level of our assessment.

As regards discriminatory valuations, the possibility of relief in administrative tribunals is at best doubtful. Therefore, where it is doubtful whether the Tax Commission has authority to equalize valuations downward and so avoid the pernicious effect of alleged discrimination, the decision of the Supreme Court of Missouri holding that recourse must first be had to the State Tax Commission is equivalent to holding that the petitioner has no remedy except to have the property assessed below its true value raised, rather than to have its property which is assessed at its true value reduced. Such remedy is no remedy at all and the decision of the Supreme Court requiring petitioner to have recourse to such a remedy is a denial to the petitioner of the equal protection of the laws.

Sioux City Bridge Co. v. *Dakota Co.*, 260 U. S. 441, l. c. 445 and 446.
Green v. *R. R. Co.*, 244 U. S. 499, l. c. 520.
Conn v. *Ringer*, 32 Fed. (2d) 639, l. c. 644.

II.

From the time of the assessment of petitioner's property in June, 1926, until the final judgment of the Supreme Court of Missouri in this cause, August 2, 1929, there was no court, tribunal, or administrative body in existence which had authority to hear the petitioner's complaint or grant any redress whatever excepting a court of equity.

(1) The County Board of Equalization had no power to grant relief to petitioner. The Supreme Court of Missouri so held in the opinion in this cause.

(2) There was no statute providing for an appeal to the State Board of Equalization. See the opinion in this cause.

(3) The aggrieved taxpayer cannot pay the tax under protest and later recover the same.

Robbins v. *Latham,* 134 Mo. 466.

(4) The aggrieved taxpayer cannot set up the defense of fraudulent discrimination as a defense in an action by the Collector to collect the tax, but must resort to a court of equity.

State ex rel. v. *Western Union Telegraph Co.,* 165 Mo. 502.

State ex rel. v. *Johnson,* 279 Mo. 228.

(5) The aggrieved taxpayer had no right of appeal to the State Tax Commission and the State Tax Commission had no jurisdiction to entertain any such appeal or to grant any redress because the law under which the State Tax Commission came into existence

and derived its powers was unconstitutional in so far as it appeared to confer any such jurisdiction.

Laclede Land & Imp. Co. v. *State Tax Commission,* 295 Mo. 298.

This case was overruled by the Supreme Court in the present case.

There was, therefore, no place in the whole scheme of assessing or levying or collecting the tax for the petitioner to be heard excepting in a court of equity.

Boonville Nat'l Bank v. *Schlotzhauer,* 317 Mo. 1298.

Therefore, the decision of the Supreme Court of Missouri that the petitioner had no standing in a court of equity because it had failed to pursue its legal remedy, left the petitioner without any court or tribunal competent to pass on the validity of a fraudulently discriminatory tax and is a denial to the petitioner of due process of law.

Central of Georgia Ry. Co. v. *Wright,* 207 U. S. 127, 141.
Londoner v. *City,* 210 U. S. 373, 385.
Turner v. *Wade,* 254 U. S. 64. 67.

The assessment was made by the assessor as of June 1, 1926.

R. S. Mo. 1919, Sec. 12766.

The State Board of Equalization met for the purpose of equalizing the taxes of 1927, in February, 1927. Sec. 12854.

The County Board of Equalization met for the same purpose on the first Monday of April, 1927. Sec. 12820.

The taxes of 1927 fell due October 1, 1927, and became delinquent January 1, 1928. Sections 12,906 and 12,907.

If the petitioner had a right to appeal to the State Tax Commission said appeal must be taken between April 1, 1927 (Abs. of Record, p. 42) and the time when the Collector receives the tax books from the County Collector. Sec. 12848.

Respectfully submitted,

ROY W. RUCKER,
LEE MONTGOMERY,
Attorneys for Petitioner.

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Term No. 464.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY, PETITIONER,

VS.

WALTER O. HILL, TREASURER AND EX OFFICIO COLLECTOR OF HENRY COUNTY, MISSOURI, RESPONDENT.

STATEMENT, ASSIGNMENT OF ERRORS, BRIEF AND ARGUMENT OF PETITIONER.

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY, PETITIONER,

VS.

WALTER O. HILL, TREASURER AND EX OFFICIO COLLECTOR OF HENRY COUNTY, MISSOURI, RESPONDENT.

STATEMENT.

This cause is here on a writ of certiorari to the Supreme Court of the State of Missouri.

Petitioner, hereinafter called the Trust Company, filed its amended bill in equity to enjoin the respondent, the Collector of Revenue for Henry County, Missouri, from collecting 25 per cent of the taxes assessed as of June 1, 1926, against the Trust Company's shares of stock by the Assessor of Clinton Township, Henry County, Missouri (Clinton Township being the taxing

district) for the year 1927, on the ground that the tax was void because the township assessor deliberately, intentionally, systematically, and arbitrarily discriminated against the petitioner's shareholders by assessing their shares of stock at full value and deliberately, systematically, and arbitrarily omitting to assess certain classes of property of great value, such as poultry of all kinds and sucking animals of all kinds, and deliberately, systematically, and arbitrarily assessing the great mass of other property in the township which is subject to an *ad valorem* tax at not to exceed 75 per cent of its true value in money, in contravention of the Trust Company's rights under the Fourteenth Amendment of the Constitution of the United States to the equal protection of the laws and to due process of law.

The bill further alleged that the tax in excess of 75 per cent thereof was illegal and void and that the Trust Company had no clear, complete, and adequate legal remedy at any stage; that there was no remedy by appeal to the County Board of Equalization because said County Board had no power to grant any relief; nor was there any remedy by appeal to the State Board of Equalization because no appeal is permitted by law; nor was there any remedy by a writ of certiorari against the County Board of Equalization or against the State Board of Equalization because the record of neither board would show or could be made to show the discrimination; nor was there any remedy by setting up the discrimination in the then pending action by the collector against the Trust Company for the collection of these taxes, as a partial defense nor by

cross bill therein, nor by paying said tax and suing to recover 25 per cent of it back.

The bill alleged the pendency of an action brought by the respondent to recover these taxes and that, unless the Trust Company be granted the relief therein sought, it would either have to pay the taxes or the taxes would become a lien on the shares of stock and the shares would be sold; and that the Trust Company has a large number of stockholders and brings this suit as trustee for said stockholders and that this action will prevent a multiplicity of actions.

The bill further alleged that the Trust Company had tendered to the respondent 75 per cent of the taxes before the same fell due and continues to tender the same.

The bill prayed that the respondent be enjoined from the prosecution of the said pending action to recover the taxes until the termination of this action and that the respondent be permanently enjoined from collecting the illegal tax, that is, the excess over 75 per cent.

(For Amended Petition see Record, pages 3 to 12.)

The answer, after admitting certain allegations and denying certain other allegations, neither of which are now material, alleges (Record, p. 15, par. 16); that the bank is guilty of laches in not first appealing to the County Board of Equalization (Art. III, Chap. 119, R. S. Mo. 1919) and in not first appealing to the State Board of Equalization (Art. IV, Chap. 119, R. S. Mo. 1919) before bringing this action and that

the action of the State Board of Equalization in fixing the amount of the assessment is a final judgment (see par. 18 of answer, Record, p. 15).

The answer did not plead that plaintiff was guilty of laches in not first appealing to the State Tax Commission. The necessity of first appealing to the State Tax Commission did not arise in this case until the Supreme Court of Missouri injected it in the opinion in this cause (Record, pp. 251 to 256). The opinion is not yet reported in the official report (Sec. 19 S. W. (2d) l. c. 749). Counsel for the defense below complained only of the Trust Company's failure to first appeal to the County Board of Equalization or the State Board of Equalization before coming into equity. The Supreme Court of Missouri in the case of *Laclede Land & Improvement Company* v. *State Tax Commission*, 295 Mo. 298, decided in 1922, that the State Tax Commission had no jurisdiction to grant relief against a taxpayer complaining of a discriminatory assessment. This decision continued to be the law of Missouri until the opinion was handed down in the present case.

In respondent's brief in opposition to petition for writ of certiorari in this cause, on page 2, it is stated that the trial court held that since the Trust Company did not appear before the State Tax Commission and make complaint or request relief in regard to the assessment of its property, it failed to avail itself of its adequate and complete legal remedies and was not entitled to relief. This statement is not true. The record shows that no attorney or party to this action ever made mention of the State Tax Commission in pleadings, evidence, or argument.

At the trial the Trust Company showed that an assessment of its shares of stock had been made at 100 per cent per annum of its actual value in money as shown by the return of its officers under oath as required by law. This evidence was not disputed (Record, p. 53).

This evidence also showed and it was admitted that Henry County is under township organization (alleged in par. II, Record, p. 4; admitted par. 2, Record, p. 12) and that Clinton township of Henry County was the taxing district in which the Trust Company had its place of business and that the assessor of Clinton Township intentionally and systematically omitted to assess any poultry of any kind (Record, pp. 121, 169, 173, 180) and that the value of chickens alone in Henry County was between $400,000.00 and $500,000.00 on June 1, 1926 (Record, pp. 112, 136, 139) and that it was the deliberate policy of the assessor not to assess any sucking animals (Record, pp. 46, 49, 76, 109, 121, 148, 169, 173, 179) and that sucking lambs on June 1, 1926, were worth more than all other sheep in Henry County (Record, pp. 45, 108, 123, 124, 174). This evidence was undisputed.

The defendant admitted under oath that merchants' stock of goods in Clinton Township in which is located the biggest city in Henry County, were assessed as of June 1, 1926, at about 75 per cent of their true value (Record, pp. 38, 39). This evidence was uncontradicted. Plaintiff showed by competent and well qualified experts who studied every transfer of real estate in Henry County made in the calendar year of 1926 that the

assessed valuations of property conveyed during that year were not over 60% of the actual (not the expressed) considerations for the transfers (Record pp. 55 to 59, 62, 63, 65) and that real estate in Clinton Township was assessed at not to exceed 75% of its true value in money (Record, pp. 59, 63, 115). This evidence was uncontradicted.

The Trust Company's evidence showed that sheep in Clinton Township and in Henry County were assessed at an average value of $4.59 per head but were worth on an average more than twice that much (Record, pp. 43, 48, 124); that neat cattle were assessed at $29.77 per head but were actually worth more than twice that much (Record, pp. 45, 46, 103, 126); that hogs were assessed at $13.91 per head which was about two-thirds of their value (Record, pp. 46, 125); that horses were assessed at an average of $31.66 per head which was not 60 per cent of their actual value (Record, p. 52) and that mules were assessed at $47.69 a head which was not one-half of their value (Record, p. 50); that household goods were assessed at from 10 per cent to 60 per cent of their actual value (Record, pp. 53, 104, 110, 116, 127) and that farm machinery was assessed at less than 75 per cent of its value (Record, p. 110 and tables at pp. 41 and 134).

A comparison of the values of livestock and farm implements and machinery in Henry County, Missouri, as ascertained by the Federal Census of Agriculture of 1925, with the total assessed valuation of the different classes of the same property on the first day of June, 1926, is as follows:

	Valuations According to Federal Census.	Assessed Valuations.
Horses	$464,078	$234,900
Mules	280,856	166,550
Cattle	1,045,057	643,795
Sheep	56,426	21,469
Hogs	541,323	238,240
Chickens	426,482	Nothing
All other livestock	20,582	737
Farm machinery	901,272	169,979

For above tables see Record, pp. 41 and 134.

Defendant made no effort to controvert this testimony. Defendant's testimony consisted wholly of the testimony of judges of the County Court, all of whom were farmers, the assessor of Clinton Township, the County Surveyor, who was a member of the County Board of Equalization, and several assessors of other townships. Members of the County Board of Equalization testified that they told the assessors to assess everything at full value and that they tried to equalize all property at 100 per cent, but that the assessors did not assess any sucking animals of any sort and did not assess any poultry.

The assessor of Clinton Township who made the assessments in question testified that he assessed property as near 100 per cent as he knew how (Record, p. 177); that he followed a schedule "already drawed" (p. 178) by which he tried to make an average to follow for different kinds of stock; that he didn't go out to see the property but left the assessment list with the taxpayer for him to fill out, sign, and return to him; that he didn't put the taxpayer under oath (p. 179); that he told the taxpayer he didn't have to list sucking

animals and that he did not assess them and that he did not assess chickens. He testified that he and eighteen other township assessors met with the County Court sometime before June 1 and agreed that a flat rate of $5.00 per head for sheep would be fair (p. 180) and that they agreed on $40.00 for common mules and an average rate of $30.00 for grade cattle of three years and over.

The proof of the fact of the discrimination was overwhelming and in fact not seriously controverted.

The court below found for the defendant and the Trust Company appealed the case to the Supreme Court of Missouri. The motion for new trial in the court below (Record, p. 240, *et seq.*) raised the questions under the Federal Constitution which are here involved. The Supreme Court of Missouri on June 29, 1929, rendered a judgment affirming the judgment of the court below (Record, p. 245). A motion for rehearing was duly filed raising the questions herein raised (Record, p. 257). The same was overruled by the Supreme Court of Missouri on August 2. Thereupon petition for writ of certiorari was timely filed and the writ granted.

The Supreme Court of Missouri, in the opinion found in the record at page 246 (19 S. W. (2d) 746, not yet published in official reports), affirmed the judgment. In stating the questions involved in the case (Record, pp. 249 and 250, 19 S. W. (2d) l. c. 749), the court said that there could be no question but that the assessor's failure to assess sucking animals and poultry was both intentional and pursuant to a system which must have been patent not only to the County Board

of Equalization but to the State Board as well, and that as the latter board permitted the assessment as a whole to stand it must be presumed that a like situation obtained with respect to every county in the state, from which it would appear on principle that all taxpayers of the state should be entirely relieved so far as the taxes for 1927 are concerned because the owners of poultry were not taxed at all. This grave situation led the court to declare, "It seems necessary that we rechart our course." Thereupon, the court proceeds to discuss the contention of the defendant that the Trust Company "did not make timely use of available legal remedies which were in every respect adequate and complete." In discussing these clear and adequate remedies available to the bank two years before the opinion was handed down, the court holds that the County Board of Equalization was powerless to grant relief (Record, p. 251); that the statute did not provide for appeals to the State Board of Equalization, a hearing before it being a mere matter of grace. The court further said (p. 251):

> "Appellant nowhere mentions in its brief and argument the State Tax Commission. • • • If that tribunal is without jurisdiction to administer relief where fraudulent assessments have been made such as are charged to have been made in this case, then it must be true, as appellant asserts, that it has no remedy except in a court of equity."

The court then makes reference to Section 12847 R. S. Mo. 1919 in relation to the powers of the State Board of Equalization particularly referring to its

power "to receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, to investigate the same, and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist. The court also cites the provisions of the statute which permits an aggrieved taxpayer to appeal to the State Tax Commission after the several boards of equalization have passed upon the assessment rolls and before the delivery of the tax roll to the collector. Upon such appeal the State Tax Commission shall call a hearing at the county seat and shall order the assessor to be present with the sworn statements of all persons whose property or whose assessments are to be considered. The Tax Commission shall publish a copy of the order in a newspaper in the county and, where practicable, notice shall be given by mail of said hearings to all persons whose assessments are to be considered. A member of the Commission or one of its agents must appear at the hearing to hear and determine as to the proper assessment of all property and persons mentioned in the notice and all persons affected by a review of the assessments. A member of the Commission or its agent is authorized to correct the assessment rolls and put upon the assessment rolls property omitted from assessment. Such action "shall be final when approved by the State Board of Equalization."

The court holds that under such statute the State Tax Commission has authority to put on the assessment rolls property omitted from assessment and to correct the assessment of any property which has been improperly valued.

The Supreme Court further says that this remedy is adequate, certain, and complete (19 S. W. (2d), l. c. 751, Record, p. 256).

In the opinion (p. 255) the court alludes to the fact that in 1922 in the *Laclede Land & Improvement Company case* v. *State Tax Commission,* 295 Mo. 298, it denied all such jurisdiction to the State Tax Commission. The opinion does not quote the former opinion in which this same court characterizes the contention that the State Tax Commission had such jurisdiction as "preposterous" and "unthinkable."

Under the decision of the Supreme Court of Missouri in this cause the Trust Company should have complained to the State Tax Commission sometime between April 1, 1927 (when the State Board of Equalization finally passed upon the assessment of bank stocks) (Record, p. 33) and the time when the tax rolls are delivered to the collectors, which was about October 1, 1927. A clear and adequate remedy, disclosed for the first time in the court's opinion on June 29, 1929, must have been invoked by the Trust Company between April 1 and October 1, 1927. For failure to avail itself of this remedy the Trust Company is denied any standing in a court of equity.

ASSIGNMENT OF ERRORS.

I.

The decision of the Supreme Court of Missouri in this cause contravenes the appellant's right under Section 1 of the Fourteenth Amendment of the Constitution of the United States to the equal protection of the laws by refusing to grant petitioner any relief against an assessment which was intentionally, deliberately, systematically, and fraudulently discriminatory against the petitioner.

II.

The Supreme Court of Missouri erred in refusing to grant such relief to the petitioner against such discriminatory assessment for taxes by holding that the petitioner had no right to come into a court of equity for injunctive relief against the discriminatory part of the assessment and tax because the petitioner had not first appealed to the State Tax Commission for redress of its grievances when, under the law at the time when said appeal must have been taken, Article IV of Chapter 119 of the Revised Statutes of Missouri of 1919, which purported to grant a legal remedy to petitioner against such discriminatory assessment and tax, was held to be unconstitutional in so far as it was intended to give the State Tax Commission any power or jurisdiction to grant redress against such discriminatory tax. The effect of such

decision was to deprive the petitioner of an opportunity to be heard in defense of its constitutional rights before any tribunal or administrative body and amounts to a denial to the petitioner of due process of law guaranteed to it under the Fourteenth Amendment of the Constitution of the United States.

III.

The Supreme Court of Missouri erred in refusing to grant relief to the petitioner against such discriminatory assessment of taxes on the ground that the petitioner must first exhaust his legal remedy, that is, by appealing to the State Tax Commission, although the State Tax Commission has no legal right or authority to lower the assessment of petitioner's property which is admittedly assessed at its full value in money. Therefore, the State Tax Commission could only grant relief by placing upon the assessment rolls all of the property deliberately omitted therefrom and by assessing such omitted property and the great bulk of other property which was under assessed, at their full value in money. This is equivalent to a holding that the petitioner's remedy is not in a court of equity, but by a proceeding before a tribunal for the purpose of getting the assessment of other property raised up to the level of the assessment of petitioner's property.

PETITIONER'S BRIEF.

I.

The decision of the Supreme Court of Missouri in 1929 that the Trust Company had a right in 1927 to complain to the State Tax Commission for redress of its grievances and that the Trust Company's failure to complain to the State Tax Commission in 1927 constitutes laches which prevents it from coming into a court of equity for relief is, under the circumstances shown in this record, an arbitrary denial to the Trust Company of its constitutional right to the equal protection of the laws.

The Trust Company cannot here complain of the court's decision that the State Tax Commission had ample power and jurisdiction under the Missouri statute to grant such relief. That is a state question about which the Supreme Court has a right to change its mind. If it sees fit in 1929 to adopt certain conclusions which in 1922 it characterized as "preposterous" (*Laclede Land & I. Co.* v. *State Tax Commission*, 295 Mo. l. c. 303) and "unthinkable" (S. C. p. 304) it can do so. However, when it goes a step further and denies the Trust Company its rights under the Federal Constitution upon the ground that the Trust Company has been guilty of laches in not complaining to the State Tax Commission in 1927, such action is an arbitrary denial of a citizen's constitutional right. State courts have a right to change their

minds regarding the law, but the declaration of the state court in 1929 that the Trust Company in 1927 had a plain, clear, and certain legal remedy by complaint to the State Tax Commission in 1927, in the face of the consistent policy of the State Tax Commission to refuse such jurisdiction and in the face of the state court's decision that it had no right to take such jurisdiction, *does not change the fact that the Trust Company did not have in* 1927 *a plain, clear, legal remedy before the State Tax Commission.* Therefore, the question before Your Honors is not a question of state practice but a question as to whether you will permit a state court to arbitrarily deprive a citizen of its admitted right to relief against an infringement of its constitutional rights.

II.

The only possible relief which the State Tax Commission could have granted to the petitioner, if the petitioner had applied to it for redress, would have been for the State Tax Commission to have placed upon the assessment rolls the property which had been intentionally omitted therefrom by the other assessing officers and by assessing the same and also all underassessed property, which embraced practically all other property in the taxing district, at its full value in money.

The powers of the State Tax Commission are conferred by Article IV of Chapter 119, R. S. Mo. 1919, which, among others, contains the following provisions:

> Section 12847. It shall be the duty of the Commission and the Commission shall have power

and authority subject to the right of the State Board of Equalization, finally to adjust and equalize the value of real and personal property among the several counties of the state, as follows:

(1) To have and exercise general supervision over all the assessing officers of the state, over County Boards of Equalization and appeal in the performance of their duties and to take such measures as will secure the enforcement of the provisions of this article and all the properties in this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

(3) To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist.

(7) To cause to be placed upon the assessment rolls omitted property which may be discovered to have, for any reason, escaped assessment and taxation * * *.

(8) To raise or lower the assessed valuation of any real or personal property of any individual * * * or corporation; provided, etc.

All of the statutes of Missouri relating to the assessment of real and personal property of every character provide that all property shall be valued and assessed according to its true value in money.

Sections 12802 and 12775, R. S. Mo. 1919.

The State Board of Equalization, whose approval is necessary to give validity to any act of the State Tax

Commission is only given authority to assess property at its true value in money.

Section 12855 confers upon the State Board power only to increase the valuation of property which it believes to be valued below its real value in money by such percentum as will increase the same to its true value or to deduct from the valuation of property deemed to be valued below its real value in money such percentum as will increase the same in each case to its true value.

There is nothing in the entire statutory scheme for the assessment of property in Missouri which authorizes any assessing officer or body to assess any property at less than its true value in money.

The State Tax Commission had no legal right or power to assess our stock at less than its admitted true value in money. Therefore, it could only grant redress by raising everything else up to the level of our assessment.

As regards discriminatory valuations, the possibility of relief in administrative tribunals is at best doubtful. Therefore, where it is doubtful whether the Tax Commission has authority to equalize valuations downward and so avoid the pernicious effect of alleged discrimination, the decision of the Supreme Court of Missouri holding that recourse must first be had to the State Tax Commission is equivalent to holding that the petitioner has no remedy except to have the property assessed below its true value raised, rather than to have its property which is assessed at its true value reduced. Such remedy is no remedy at

all and the decision of the Supreme Court requiring petitioner to have recourse to such a remedy is a denial to the petitioner of the equal protection of the laws.

Sioux City Bridge Co. v. *Dakota Co.*, 260 U. S. 441, l. c. 445 and 446.
Green v. *R. R. Co.*, 244 U. S. 499, l. c. 507, 513, 521.
Conn v. *Ringer*, 32 Fed. (2d) 639, l. c. 644.

III.

From the time of the assessment of petitioner's property in June, 1926, until the final judgment of the Supreme Court of Missouri in this cause, August 2, 1929, there was no court, tribunal, or administrative body in existence which had authority to hear the petitioner's complaint or grant any redress whatever excepting a court of equity.

(1) The County Board of Equalization had no power to grant relief to petitioner. The Supreme Court of Missouri so held in the opinion in this cause (19 S. W. (2d) l. c. 749).

(2) There was no statute providing for an appeal to the State Board of Equalization. See the opinion in this cause (S. C. 19 S. W. (2d) l. c. 749).

(3) The aggrieved taxpayer cannot pay the tax under protest and later recover the same.

Robbins v. *Latham*, 134 Mo. 466.

(4) The aggrieved taxpayer cannot set up the defense of fraudulent discrimination as a defense in

an action by the collector to collect the tax, but must resort to a court of equity.

State ex rel. v. *Western Union Telegraph Co.*, 165 Mo. 502.
State ex rel. v. *Johnson*, 279 Mo. 228.

(5) The aggrieved taxpayer had no right of appeal to the State Tax Commisson and the State Tax Commission had no jurisdiction to entertain any such appeal or to grant any redress because the law under which the State Tax Commission came into existence and derived its powers was unconstitutional in so far as it appeared to confer any such jurisdiction.

Laclede Land & Imp. Co. v. *State Tax Commission*, 295 Mo. 298.

This case was overruled by the Supreme Court in the present case.

There was, therefore, no place in the whole scheme of assessing or levying or collecting the tax for the petitioner to be heard excepting in a court of equity.

Boonville Nat'l. Bank v. *Schlotzhauer*, 317 Mo. 1298.

Therefore, the decision of the Supreme Court of Missouri that the petitioner had no standing in a court of equity because it had failed to pursue its legal remedy, left the petitioner without any court or tribunal competent to pass on the validity of a fraudulently discriminatory tax and is a denial to the petitioner of due process of law.

Central of Georgia Ry. Co. v. *Wright*, 207 U. S. 127, 141.
Londoner v. *City*, 210 U. S. 373, 385.
Turner v. *Wade*, 254 U. S. 64, 67.

The assessment was made by the assessor as of June 1, 1926.

R. S. Mo. 1919, Sec. 12766.

The State Board of Equalization met for the purpose of equalizing the taxes of 1927, in February, 1927. Sec. 12854.

The County Board of Equalization met for the same purpose on the first Monday of April, 1927. Section 12820, R. S. Mo. 1919.

The taxes of 1927 fell due October 1, 1927, and became delinquent January 1, 1928. Sections 12906 and 12907, R. S. Mo. 1919.

If the petitioner had a right to appeal to the State Tax Commission, said appeal must be taken between April 1, 1927 (Record, p. 34) and the time when the collector receives the tax books from the county collector.

Section 12848, R. S. Mo. 1919.

Therefore, there was not any court, tribunal, or administrative body in existence which between April 1 and October 1, 1927, had authority to hear petitioner's complaint or grant any redress whatever excepting a court of equity. Consequently, the court's refusal to permit the court of equity to take jurisdiction of the Trust Company's complaint is a denial of due process of law to the Trust Company.

Respectfully submitted,

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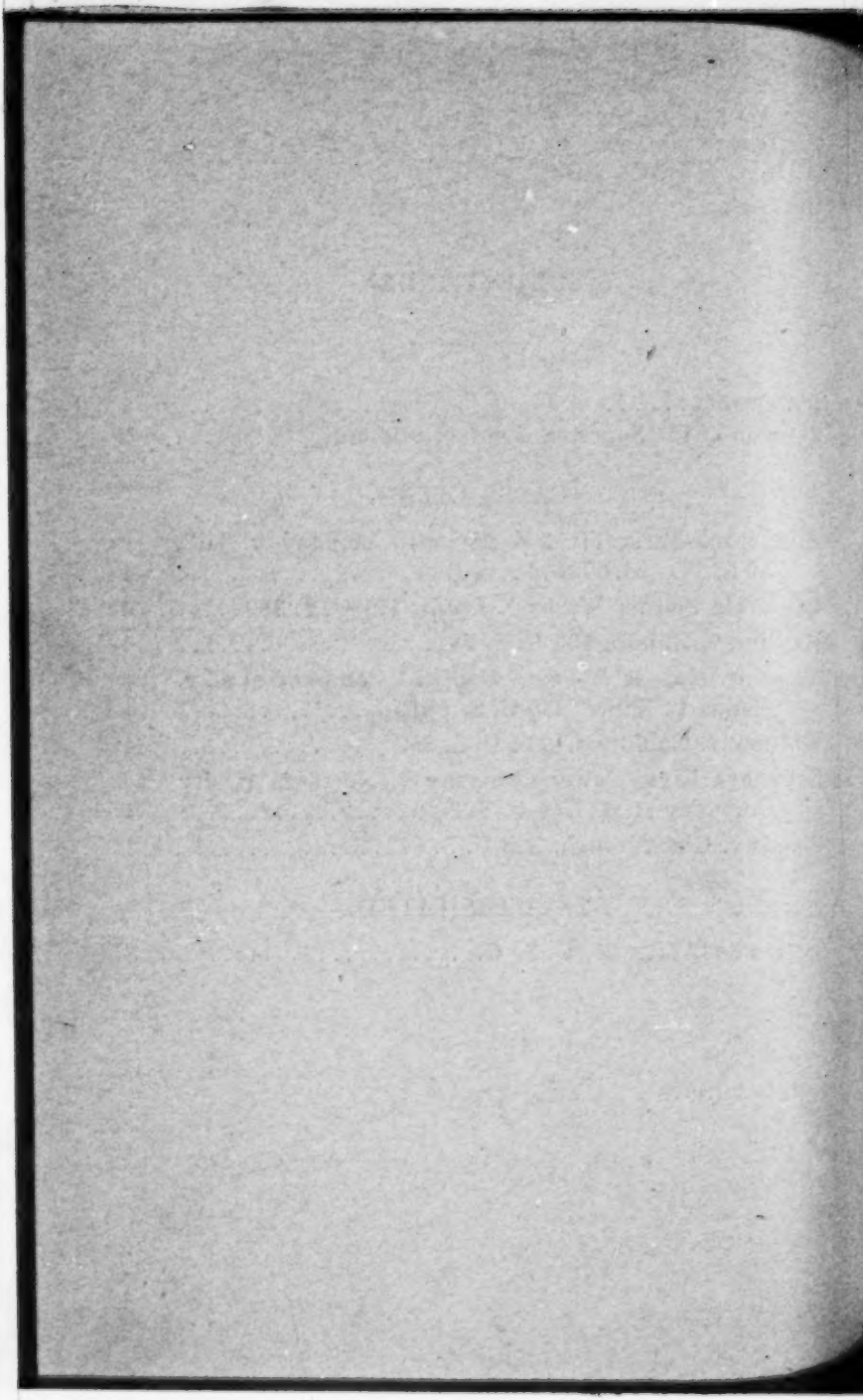

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No.....

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, *Petitioner*,

vs.

WALTER O. HILL, Treasurer and Ex Officio Collector in and for Henry County, Missouri, *Respondent*.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

Final judgment was rendered in the Supreme Court of Missouri in this case on the 29th day of June, 1929, and motion for rehearing was denied by said court August 2, 1929, case being reported in 19 S. W. (2d.) 746.

The petitioner instituted this action to enjoin the respondent as Treasurer and Ex officio Collector of Henry County, Missouri, from collecting twenty-five per cent of the taxes levied on the assessed valuation of its shares of stock against the respective owners of such shares, and alleged that all other classes of property in Henry County, Missouri, had been assessed for taxation at seventy-five per cent of its true value in money and that the shares of stock in the plaintiff bank and trust company had been assessed at its true value in money, and that such assessment was illegal and void because it constituted a deliberate, intentional and systematic discrimination against petitioner and a violation of its rights under Section 3 of Article X of

the Constitution of Missouri, Section 4 of Article X of the Constitution of Missouri, and Section 1 of Article XIV of the Constitution of the United States in that it deprives the plaintiff's shareholders of the equal protection of the laws and deprives them of their property without due process of law.

Upon the trial of such cause in the Circuit Court of Henry County, Missouri, on the merits, the finding and judgment was for the respondent and petitioner appealed to the Supreme Court of the State of Missouri where the judgment and finding of the trial court was affirmed.

The court held that as the petitioner did not appear before the County Board of Equalization of Henry County, Missouri, or the State Tax Commission of the State of Missouri, or the State Board of Equalization of the State of Missouri, and make complaint or request relief in regard to the assessment of its property, but failed to avail itself of the remedies provided by law, which remedies were adequate and complete, that it was not entitled to equitable relief. The court further held that petitioner having delayed instituting its action until after the assessment of its property and fixing of the valuation thereof for taxation had become final and the taxes had been extended thereon and certified to the respondent for collection, and until after the State, county and other political subdivisions of the State had entered into contracts and incurred liabilities based upon the estimated amount of revenue that would be produced under the assessment and taxation of property for that year, that petitioner was guilty of such laches that it was not entitled to recover.

BRIEF.

Respondent respectfully submits that the petition for the writ of certiorari herein is wholly insufficient in that it fails to definitely state where is drawn in question the validity of a statute of the State of Missouri on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

The only ground upon which the petitioner could claim to be entitled to the issuance of a writ of certiorari from this court to review the judgment of the Supreme Court of Missouri in this cause is the second clause of Section 344 of Title 28, U. S. C., which is as follows:

> " * * * or where is drawn in question the validity of a statute in any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, etc."

Petitioner makes no attack whatever upon any statute of the State of Missouri as being in violation of the Constitution, treaties or laws of the United States.

The question for determination by the Supreme Court of Missouri was whether or not there had been in fact any deliberate, systematic, intentional discrimination against the petitioner in the assessment of its property, and whether or not the petitioner had adequate remedies at law, and whether or not it availed itself of such remedies before applying for equitable relief, and whether or not the petitioner had been guilty of such laches as to bar it from equitable relief. On all of these issues the trial court and also the Supreme Court found against the petitioner. It was not necessary under the pleadings and facts in the case and issues raised for the court to determine the constitu-

tionality or validity of any statute and the only issue determined was in regard to the construction of the statutes.

When as in this case the decision of the state court is based on other than federal grounds, the writ of certiorari should not issue.

Harding v. Illinois, 196 U. S. 78.

When as in this case the decision of the state court is based on laches, the petitioner is not entitled to review.

Woods v. Chesborough, 228 U. S. 672.

The Supreme Court of the United States will not review on certiorari the decision of the Supreme Court of a state where that decision is based on the construction of the state's statutes unless it affirmatively appears that there has been drawn in question the validity of a statute of a state on the ground of it being repugnant to the Constitution, treaties or laws of the United States.

In order to give this court jurisdiction it must appear affirmatively not only that a federal question was presented for decision by the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it.

California Powder Works v. Davis, 151 U. S. 389;
Missouri, Kansas & Texas Railroad Co. et al. v. Hanna L. Zuber, 256 U. S. 681;
Whitney v. California, 274 U. S. 357.

Where the judgment of a state court may rest upon either a federal or a non-federal ground, and the basis actually adopted does not appear by the court's opinion or otherwise, this court has no jurisdiction to review.

Cuyahaga River Power Co. v. Northern Realty Company et al., 244 U. S. 300.

It appears from the decision of the Supreme Court of Missouri in this case that it was based upon the question of the remedies afforded the petitioner by statute. The court found that the remedies provided by statute for relief in such cases were adequate and complete and that the petitioner failed to avail itself of such remedies. It will be observed from the opinion of the Supreme Court of Missouri and from the petition for writ of certiorari filed in this court, that the petitioner made no claim and now makes no claim that any statute of the State of Missouri concerning the assessment and taxation of its shares of stock is contrary to, or in violation of the Constitution, treaties or laws of the United States.

Wherefore, respondent respectfully suggests that the petition for the writ of certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 464.

BRINKERHOFF-FARIS TRUST AND SAVINGS COMPANY, Petitioner,

vs.

WALTER O. HILL, Treasurer and Ex-Officio Collector of Henry County, Missouri, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT, BRIEF AND ARGUMENT OF THE RESPONDENT.

STATEMENT.

The plaintiff is a Missouri corporation engaged in the bank and trust company business at Clinton, Henry County, Missouri. The defendant is the Treasurer and Ex-Officio Collector of Revenue of Henry County, Missouri. The shares of stock in said corporation were assessable for taxation against the owners thereof on the 1st day of June, 1926, under Section 12775, R. S. Mo. 1919, and return thereof was made by the vice-president of said corporation to the Assessor of Clinton Township in said county, it

being under township organization, in which return the true net value of such shares of stock subject to taxation was given and stated by said corporation as $144,660.00. The township assessor accepted the valuation fixed by the corporation in its return and assessed said property for taxation at $144,660.00, which assessment valuation was approved by the County Board of Equalization of Henry County, Missouri, in the performance of its duty at its regular session in 1927 in equalizing the assessment of property subject to taxation in said county between the respective owners thereof. The Clerk of the County Court of Henry County, Missouri, duly certified the aggregate assessed valuation of the several classes of property in Henry County, Missouri, under the assessment of June 1, 1926, to the State Board of Equalization of Missouri, which in the performance of its duty at its regular session in 1927 in equalizing and adjusting the aggregate valuations of the several classes of property subject to taxation in the City of St. Louis and the several counties of the State between them, made no change in the assessed valuation of shares of stock in banks and trust companies in Henry County, Missouri. Accordingly, the valuation of the shares of stock in plaintiff bank and trust company was duly extended on the tax books at the amount fixed by it in its return and assessed by the township collector, to-wit, $144,660.00, against the owners of such shares of stock, and all taxes levied by lawful authority were duly extended against the same and certified to the township collector for collection. The plaintiff on the 30th day of December, 1927, tendered the township collector seventy-five per cent of said taxes, which was refused. Said taxes became delinquent on the 1st day of January, 1928, and it thereupon became and was the duty of the defendant to collect them, and he instituted suit therefor.

The plaintiff did not appeal to the County Board of Equalization of Henry County, Missouri, from the assess-

ment of said shares of stock by the assessor as it could have done under Section 12823, R. S. Mo. 1919, and as it was its duty to do if it complained of the valuation of such property as fixed by the township assessor.

The plaintiff, after the assessment rolls were made up, made no complaint to the State Tax Commission that such shares of stock were improperly assessed as it could have done under Section 12848, R. S. Mo. 1919, and as it was its duty to do if it complained of the assessed valuation of such shares of stock as fixed by the township assessor and approved by the county board of equalization.

The plaintiff made no complaint in regard to the assessment of said shares of stock until long after the assessment became final and the County Board of Equalization of Henry County, Missouri, and the State Board of Equalization of Missouri had acted thereon and finally adjourned; and such valuation was extended on the tax books of the county by the clerk of the county court and all taxes levied by lawful authority extended against the same and certified to the township collector for collection.

The plaintiff made no complaint that said shares of stock were not assessed for taxation at their true value in money. In fact, the plaintiff took no steps whatever to correct the assessment of its shares of stock or in regard thereto until it instituted this suit on the 26th day of April, 1928, after said taxes had become delinquent and the State of Missouri, Henry County, Missouri, and other political subdivisions of the State had entered into contracts based upon the revenue to be produced therefrom.

The plaintiff filed its amended petition in this cause in the Circuit Court of Henry County, Missouri, on the 23rd day of January, 1929, seeking to enjoin the defendant from collecting or attempting to collect any part of the taxes assessed and levied against said shares of stock based upon the valuation in excess of seventy-five per cent of the value thereof as stated in its return and fixed by the township

assessor and the several boards of equalization, charging that the township assessor had assessed all other real and personal property within Clinton Township in Henry County, Missouri, at seventy-five per cent of its true value in money, and had assessed all shares of stock in banks and trust companies in said county at the value thereof as stated in the returns made to the several assessors by the officers of such corporations, and that such valuation was the true value in money of such shares of stock on the first day of June, 1926; and that said township assessor had failed and omitted to assess poultry and suckling animals in said township and that the assessment of its shares of stock at their true value in money by the township assessor and the approval of such assessment by the county board of equalization and the approval of the aggregate of such assessments in Henry County, Missouri, by the State Board of Equalization, constituted a discrimination against the plaintiff and the shares of stock of plaintiff in violation of Sections 3 and 4 of Article X of the Constitution of Missouri, and in violation of Section 1 of Article XIV of the Constitution of the United States, and that the tax authorities had deliberately, intentionally, systematically and arbitrarily valued and assessed plaintiff's property at its true value in money, and deliberately, intentionally, systematically and arbitrarily undervalued and assessed all other property in Clinton Township, Henry County, Missouri, at seventy-five per cent of its true value in money, and had failed and omitted to assess poultry and sucking animals in said township.

The answer of defendant in substance denied that any discrimination had been made in the assessment of shares of stock in banks and trust companies or of shares of stock of plaintiff trust company, or that poultry and sucking animals were not assessed, or that all other real and personal property in Clinton Township, and in Henry County, Missouri, was assessed at only seventy-five per cent of its true value

in money, and alleged that the plaintiff failed to avail itself of adequate remedies provided by law, if such shares of stock were improperly assessed for taxation by the township assessor, and was not entitled to equitable relief, and also that the plaintiff had been guilty of such delay and laches in instituting the suit as to bar it from equitable relief.

The cause was tried before the Judge of the Circuit Court of Henry County, Missouri, on the 23 and 24 days of January, 1929, and judgment was rendered by said court on the 4th day of March, 1929, as follows:

> "Now on this 4th day of March, 1929, this cause coming on for final decision and judgment, the same having been taken under advisement by the court on January 24th, 1929, and the court now being fully advised in the premises finds the issue for the defendant.
>
> "It is therefore ordered, considered and adjudged by the court, that the prayer of the plaintiff for an injunction be, and the same is hereby denied, and the petition therefore dismissed.
>
> "It is further ordered and adjudged that the defendant have and recover of the plaintiff his costs herein laid out and expended, and have execution therefor."

The plaintiff, after unsuccessful motion for new trial, duly appealed to the Supreme Court of Missouri where the judgment of the trial court was affirmed. 19 S. W. (2nd) 746.

On the 6th day of January, 1930, the Supreme Court of the United States, on application of the plaintiff, granted a writ of certiorari against the Supreme Court of the State of Missouri in this cause.

SUMMARY OF ARGUMENT.

I.

We respectfully submit that the writ of certiorari was improvidently issued herein and should be quashed.

The trial court, under the pleadings and all of the evidence, found the issues for the defendant. The plaintiff alleged and the evidence showed conclusively that its shares of stock were assessed against the owners thereof for taxation in accordance with Section 12775, R. S. Mo. 1919.

THE PLAINTIFF DID NOT AND AS PETITIONER DOES NOT NOW CHALLENGE THE VALIDITY OF THAT STATUTE.

No attack whatever is made upon any statute of the State of Missouri concerning the assessment of shares of stock in banks and trust companies or the assessment of other real and personal property for taxation, as being contrary to or in violation of the Constitution, treaties or laws of the United States.

No claim whatever is made that such statutes permit or contemplate any discrimination against any taxpayer in the assessment of property, and it is apparent that all of such statutes contemplate the assessment of all property at its true value in money.

The evidence shows conclusively that the instruction of all assessing officers was that all property should be assessed for taxation at its true value in money. The township assessors testified that they did, according to their best judgment, assess all property in their respective townships at its true value in money. The members of the Board of Equalization of Henry County, Missouri, testified that they did, according to their best judgment, equalize the assessment of all property in the county between the owners thereof at its true value in money.

The township assessors testified that poultry and sucking animals were not assessed by them in their respective townships, and at the close of all the evidence plaintiff was permitted to amend its petition to allege the omission of such property. There was no evidence whatever that the State Board of Equalization approved such omission or had any knowledge of such fact. The plaintiff sought to substitute the opinion of various witnesses in regard to the value of several kinds of property in the county for the judgment of the assessor and of the county board of equalization, such evidence being admitted over the objections of the defendant. Respondent still insists such evidence is incompetent, but if deemed competent, it is insufficient to establish fraud.

It is fair to presume that the trial court found that plaintiff failed to prove the allegations of its petition; that it found that plaintiff had failed to avail itself of adequate remedies provided by law; that it found that plaintiff was guilty of such delay and laches as to bar it from equitable relief. If the holding was justified on either of the grounds, it should not be disturbed.

The Supreme Court of Missouri (petitioner's printed record, page 250) said:

> "The respondent and the Attorney-General, who filed a brief in the case as amicus curiae, insist that the appellant, on at least two grounds, is not entitled to equitable relief; (1) it did not make timely use of available legal remedies which were in every respect adequate and complete; and (2) it was guilty of laches."

The court resolved the issues against the plaintiff on both points.

The plaintiff had an adequate legal remedy by appeal from the valuation fixed by the township assessor to the

county board of equalization under Sections 12821, 12822 and 12823, R. S. Mo. 1919.

The plaintiff had an adequate legal remedy under Section 12848, R. S. Mo. 1919, by making complaint under oath to the State Tax Commission. (Opinion in this case petitioner's printed record, pp. 251-256.)

The plaintiff was guilty of such laches as to bar it from recovery (Opinion in this case, petitioner's printed record, pp. 256-257.)

The only ground petitioner can claim for the issuance of a writ of certiorari herein to review the judgment of the Supreme Court of Missouri, is the second clause of Section 344 of Title 28, U. S. C., which is as follows:

> "* * * or where is drawn in question the validity of a statute in any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, etc."

The issues raised do not involve the validity of any statute, they only involve the construction of the statutes. The statutes as construed violate no provision of the Constitution, treaties or laws of the United States.

When, as in this case, the decision of the state court is based on other than federal grounds, the writ of certiorari should not issue.

Harding v. Illinois, 196 U. S. 78.

WHEN, AS IN THIS CASE, THE DECISION OF THE STATE COURT IS BASED ON LACHES, THE PETITIONER IS NOT ENTITLED TO REVIEW.

Woods v. Chesborough, 228 U. S. 672.

The Supreme Court of the United States will not review on certiorari the decision of the Supreme Court of a state where that decision is based on the construction of the state's statutes unless it affirmatively appears that there has been drawn in question the validity of a statute of a state on the ground of it being repugnant to the Constitution, treaties or laws of the United States.

In order to give this court jurisdiction it must appear affirmatively not only that a federal question was presented for decision by the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it.

California Powder Works v. Davis, 151 U. S. 389;
Missouri, Kansas & Texas Railroad Co. et al. v. Hanna L. Zuber, 256 U. S. 681;
Whitney v. California, 274 U. S. 357.

Where the judgment of a state court may rest upon either a federal or a non-federal ground, and the basis actually adopted does not appear by the court's opinion or otherwise, this court has no jurisdiction to review.

Cuyahoga River Power Co. v. Northern Realty Company et al., 244 U. S. 300.

II.

If it be held that the judgment of the Supreme Court of Missouri should be reviewed under the writ of certiorari, then we respectfully submit that the judgment should be affirmed.

THE DECISIVE QUESTION IN THIS CASE IS WHETHER PLAINTIFF IS ENTITLED TO ENJOIN THE COLLECTION OF TAXES LEVIED AGAINST ITS SHARES OF STOCK AT THEIR TRUE VALUE

IN THE MANNER PROVIDED BY LAW BECAUSE POULTRY AND SUCKING ANIMALS MAY HAVE BEEN OMITTED BY THE TOWNSHIP ASSESSORS OF HENRY COUNTY, MISSOURI, IN MAKING THEIR ASSESSMENT OF PROPERTY IN THEIR RESPECTIVE TOWNSHIPS.

If the above question be answered in the affirmative, then all taxpayers in Henry County, Missouri, should be entitled to enjoin the collection of taxes levied against their property. The above question raises the further subordinate question: Is the plaintiff entitled to decide what proportion of the taxes levied against its shares of stock it will pay, or, in other words, are taxes a gift from the taxpayer to the sovereignty, or are they an exaction levied from the owners thereof for the privilege of owning the same and having it protected and preserved by the government for whose support such taxes are levied?

There is absolutely no evidence upon which a finding could be had that all other property, except shares of stock in banks, was assessed at seventy-five per cent of its value.

If the plaintiff be entitled to enjoin the collection of all or any part of the taxes levied against its shares of stock because perchance poultry and sucking animals may not have been assessed for taxation, then all taxpayers are entitled to the same relief and, if any property within the jurisdiction in which they live be illegally omitted from taxation by inadvertence or by intention of the assessor, they are entitled to refuse to pay taxes and to go into a court of equity and enjoin the collector from collecting or attempting to collect taxes levied against their property.

The Constitution and laws of Missouri contemplate that all real and personal property subject to taxation in the State, shall be assessed at its true value in money; that it shall be assessed and taxed in proportion to its value, and that such taxes shall be uniform on the same class of sub-

jects for taxation within the territory of the authority levying the tax.

Sections 3 and 4, Article X, Constitution of Missouri;
Sections 12802, 12855, 12775, 12821, 12822, 12826, R. S. Mo. 1919;
State ex rel. v. Western Union Telegraph Company, 165 Mo. 502;
State ex rel. v. Bethards, 9 S. W. (2d) 603;
State ex rel. v. Dirckx, 11 S. W. (2d) 38;
Mercantile Trust Company v. Schramm, 269 Mo. 489.

Sections 3 and 4 of Article X of the Constitution of Missouri, are as follows:

> "Sec. 3. Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.
>
> "Sec. 4. All property subject to taxation shall be taxed in proportion to its value."

The meaning of Section 4, supra, can not be made clearer than the language used.

It has always been the law in Missouri under Section 3 of Article X of the Constitution, supra, that the validity of a tax "is in no wise impaired or affected because a different mode of assessment is provided for, so long as the same end is attained" and uniformity of assessment and taxation be maintained.

State ex rel. v. Severance et al., 55 Mo. 378, l. c. 387;
State ex rel. Johnson v. Bank, 279 Mo. 228.

In the case at bar, the evidence conclusively shows that all shares of stock in banks and trust companies in Henry County and throughout the State of Missouri,

were assessed on the same basis at their true value in money. The evidence of the township assessors and members of the County Board of Equalization of Henry County, Missouri, was that all real and personal property assessed for taxation in Henry County, Missouri, was assessed at its true value in money.

Section 12756, R. S. Mo. 1919, is as follows:

> "Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

Section 12766, page 376, Laws of Missouri, 1923, which was in effect at the time of the assessment in this case, is as follows:

> "The assessor or his deputy or deputies shall, between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following, to-wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such person to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, being in any county in this state, in accordance with the provisions of this chapter; and the person listing the property shall enter a true and correct statement of such property in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this

chapter by the person listing the property, and delivered to the assessor. Such lists shall contain: First, a list of all the real estate and its value, to be listed and assessed on the first day of June, 1893, and every year thereafter, anything in this or any other section to the contrary; second, a list of all the live stock, showing the number of horses, mares, and geldings, and their value; the number of asses and and jennets, and their value, the number of mules and their value; the number of neat cattle, and their value; the number of sheep and their value; the number of hogs and their value and all other live stock and its value; third, an aggregate statement of all the farm machinery and implements, and their value; fourth, a statement of household property, including the number of pianos and other musical instruments, clocks, watches, chains and appendages, sewing machines, gold and silver plate, jewelry, household and kitchen furniture, and the value thereof; fifth, money on hand; sixth, money deposited in any bank, or other safe place; seventh, an aggregate statement of solvent notes unsecured by mortgage or deed of trust; eighth, an aggregate statement of all solvent notes secured by mortgage or deed of trust; ninth, an aggregate statement of all solvent bonds, whether state, county, town, city, township, incorporated or unincorporated companies; tenth, the number of bee colonies and their value; ten and one-half, all motor vehicles, and their value; eleventh, all other property not above enumerated (except merchandise) and its value; under this head shall be included all pleasure carriages of all kinds; all shares of stock or interest held in steamboats, keelboats, wharf boats and other vessels; all toll bridges, all printing presses, type and machinery therewith connected, and all portable mills of every

description, and all post coaches, carriages, wagons and other vehicles used by any person in the transportation of mail (except railway carriages), all carriages, hacks, wagons, buggies and other vehicles of every kind and description kept or used by liverymen, all carts, hacks, omnibuses, and other vehicles used in the transportation of persons (except railway carriages), and all paintings and statuary, and every other species of property not exempt by law from taxation."

The applicable part of Section 12802, R. S. Mo. 1919, is as follows:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; and all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation."

The applicable part of Section 12775, R. S. Mo. 1919, concerning the assessment of shares of stock in banks, is as follows:

"Persons owning shares of stock in banks, or in joint stock institutions or associations doing a banking business, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein, and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation, company, institution or association; and

such shares, reserved funds, undivided profits, premiums or earnings and all other values so listed to the assessor shall be valued and assessed as other property at their true value in money, less the value of real estate, if any, represented by such shares of stock."

"The law contemplates that for the purposes of taxation property shall be assessed at its true value in money, * * * and it also presumes that all officers do their duty."

State ex rel. v. Western Union Telegraph Company, 165 Mo. 502, l. c. 516.

III.

Section 12775, R. S. Mo. 1919, supra, provides how the value of shares of stock in banks and trust companies shall be determined for assessment for taxation. In other words, it provides a method for determining the true value in money of such shares of stock.

The plaintiff made return by its proper officers to the township assessor under the above statute and valued such shares of stock subject to taxation and assessment against the owners thereof, after deducting the value of real estate represented by such stock, at $144,660.00. The valuation so fixed by the plaintiff was adopted by the assessor in making his assessment. No appeal therefrom was taken to the county board of equalization by the plaintiff, nor was any complaint made in regard thereto by the plaintiff to the State Tax Commission. The valuation fixed by the plaintiff in its return was not changed by anyone and the taxes, the collection of which is sought to be enjoined, were levied and extended against such valuation as being the true value of such shares of stock.

The shares of stock in plaintiff bank having been assessed for taxation at their true value in money and in

the manner provided by law, the plaintiff is in no position to complain. Plaintiff's petition and the admitted facts in the case show that the shares of stock in plaintiff trust company were assessed as provided by law, and that plaintiff is not entitled to relief by injunction.

Section 12775, R. S. Mo. 1919;
State ex rel. Johnson v. Bank, 279 Mo. 228;
State ex rel. Gardner v. Harris, 286 Mo. 262;
St. Louis Electric Bridge Company v. Koeln, 315 Mo. 424;
Bay v. Citizens State Bank, 274 Mo. 60;
State ex rel. Bybee v. Hackmann, 276 Mo. 110;
State ex rel. Meals v. Hackmann, 217 S. W. 271;
State ex rel. McCune v. Carter, 279 Mo. 304.

IV.

The State Board of Equalization of Missouri is created and its duties prescribed by the Constitution and laws of the State. Section 18, Article X, Constitution of Missouri, is as follows:

> "There shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney-General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the State, and it shall perform such other duties as are or may be prescribed by law."

Section 12855, R. S. Mo. 1919, is as follows:

> "The state auditor shall lay before the board of equalization the abstracts of all the taxable property in the state and the abstracts of the sales of real estate in such counties as returned to him by the respective county clerks and the president of the board of assessors of the city of St. Louis, and the

board shall classify all real estate situate in cities, towns and villages as town lots and all other real estate as farming lands, and shall classify all personal property as follows: First, banking corporations; second, railroad corporations; third, street railway corporations; fourth, all other corporations; fifth, bonds, notes and evidences of indebtedness; sixth, horses, mares and geldings; seventh, mules; eighth, asses and jennets; ninth, neat cattle; tenth, sheep; eleventh, swine; twelfth, farm implements and all other personal property. And the board shall proceed to equalize the valuation of each class thereof among the respective counties of the state in the following manner:

"First—It shall add to the valuation of each class of the property, real or personal, of each county which it believes to be valued below its real value in money such per centum as will increase the same in each case to its true value.

"Second—It shall deduct from the valuation of each class of the property, real or personal, of each county which it believes to be valued above its real value in money such per centum as will reduce the same in each case to its true value."

The judgment of the State Board of Equalization is final and conclusive on the question of the aggregate valuation to be placed on classes of property in the City of St. Louis and the counties of the State in equalizing the same among the counties.

Section 18, Article X, Constitution of Missouri;
Section 12855, R. S. Mo. 1919;
Sections 12821 and 12826, R. S. Mo. 1919;
State ex rel. Laclede Land & Improvement Co. v. Tax Commission, 295 Mo. 298, 243 S. W. 887;
State ex rel. v. Bethards, 9 S. W. (2d) 603;

State ex rel. v. Dirckx, 11 S. W. (2d) 38;
State ex rel. Johnson v. Bank, 279 Mo. 228;
Mercantile Trust Company v. Schramm, 269 Mo. 489;
State ex rel. v. Hall, 221 S. W. 708;
State ex rel. Gardner v. Harris, 286 Mo. 262;
State ex rel. Hawken v. Edwards, 315 Mo. 209;
State ex rel. Teare v. Dungan, 265 Mo. 353;
State ex rel. Wyatt v. Hoyt, 123 Mo. 348.

V.

The laws of Missouri provide that the assessors shall assess all property subject to taxation in their respective jurisdictions at its true value in money; Sections 12802 and 12775, R. S. Mo. 1919, and Section 12766, page 376, Laws of Missouri, 1923; that the assessed valuation as fixed by the assessor shall be examined, adjusted and equalized at its true value in money between the owners of such property by the county board of equalization of the county in which it is located, Sections 12820, 12821 and 12822, R. S. Mo. 1919; that the abstracts of the aggregate assessment of each of the classes or kinds of property located in a county as assessed for taxation by the assessors and equalized by the county boards of equalization, shall be certified to the State Board of Equalization, Section 12810, R. S. Mo. 1919, and that the State Board of Equalization shall equalize such aggregate assessment of the several kinds or classes of property between the City of St. Louis and other counties of the State so that the assessment of such property for taxation in each of them shall be at the true value of such property. Section 18, Article X, Constitution of Missouri; Section 12855, R. S. Mo. 1919.

VI.

It appears from the face of plaintiff's petition that it did not bring this action until long after the State, county

and other political subdivisions of the State had made their tax levies and entered into contracts and assumed obligations based on the assessed valuation as fixed by the assessing authorities, and by reason of such delay and laches the plaintiff is barred from equitable relief.

Lyons v. School District of Joplin, 278 S. W. 74;
Brinkerhoff-Faris Trust and Savings Company v. Hill, 19 S. W. (2d) 746, Par. 9, l. c. 751, 752;
Petitioner's printed record herein, pp. 256 and 257.

VII.

The plaintiff failed to avail itself of the remedies provided by law, took no appeal to the county board of equalization, and made no complaint to the State Tax Commission. Equitable relief will not be granted where the plaintiff had complete and adequate remedies at law of which it failed to avail itself.

34 C. J. par. 685, p. 436;
Black v. McGonigle, 103 Mo. 192;
National Bank of Unionville v. Staats, 155 Mo. 55;
Meyer v. Rosenblatt, 78 Mo. 495;
State ex rel. v. Bank of Neosho, 120 Mo. 161;
State ex rel. Johnson v. Bank, 279 Mo. 228;
State ex rel. Gardner v. Harris, 286 Mo. 262;
State ex rel. Mount Mora Cemetery Association v. Casey, 210 Mo. 235;
State ex rel. Johnston v. Buder, 242 S. W. 979;
Perkins v. St. Louis, Kansas City and Colorado Railroad Company, 143 Mo. 513;
Chicago & Alton Railroad Company v. Maddox, 92 Mo. 469;
State to use of Connelly v. Parkville G. R. R. Co., 32 Mo. 496;
San Francisco Railway Company v. Gracy, 126 Mo. 472;

Hamilton v. Rosenblatt, 8 Mo. Ap. 237;
State ex rel. Cramer v. Hager, 92 Mo. 511;
Deane v. Todd, 22 Mo. 90;
First National Bank v. Meredith, 44 Mo. 500;
McPike v. Pew, 48 Mo. 525.

VIII.

The petitioner complains that it was discriminated against and denied the equal protection of the law because the Supreme Court of Missouri in the instant case did not follow its former ruling in the case of State ex rel. Laclede Land & Improvement Company v. State Tax Commission, 295 Mo. 298, 243 S. W. 887, as to the powers of said commission.

There is no merit in this complaint.

Where the courts of the state have construed a statute as prescribing one form of procedure, and parties have acted under that construction, and then subsequently the same courts have held that the statute was theretofore misconstrued, and really provided a different mode of procedure, this last adjudication cannot be set aside in the federal court on the ground of unjust discrimination or a denial of equal protection of the law.

Backus et al. v. Fort Street Union Depot Co.,
169 U. S. 557 l. c. 571; 42 Law Ed. 853 l. c. 859;
Howard v. Kentucky, 200 U. S. 164;
50 Law Ed. 421.

IX.

The action of the township assessor in assessing property, the county board of equalization in equalizing the valuation of property between individuals, and of the State Board of Equalization in equalizing and fixing the valuation of the classes of property in the various counties of the State is judicial and their decisions have the effect of judgments.

State ex rel. Johnston v. Buder, 242 S. W. 979;
State ex rel. v. Casey, 210 Mo. 235;
State ex rel. Ashby v. Three States Lumber Co., 198 Mo. 430;
State ex rel. Arnold v. McCune, 252 S. W. 657;

Injunction cannot be used to review a judgment.

Dorris Motor Car Company v. Colburn, 307 Mo. 137.

X.

Courts of equity will not interfere with the assessment of property for taxation or enjoin the collection of taxes merely because of mistakes of assessing officers or the fallibility of human judgment. Such relief must be based upon intentional and systematic discrimination amounting to fraud or intentional and systematic discrimination in the statutes themselves, or in the method of applying the statutes such as to make them violative of the constitutional guaranties as to equal protection of the law.

"The occasional and accidental discriminations are inevitable in every assessment, and are not likely to continue, because not the result of an illegal purpose on the part of any one. If equitable interference in such cases could be invoked, the obstruction to the collection of taxes would be so frequent as to be intolerable. More than this, an action to enjoin a tax is a collateral attack upon the judgment of a quasi judicial tribunal; and it cannot be justified except on the ground of an obvious violation of law, or something equivalent to fraud. It does not lie where the injury complained of arises only from the erroneous, but honest, judgment of the lawfully constituted tax tribunal."

Taylor et al. v. Louisville & N. R. Co., 88 Fed. 350, l. c. 373 and 374.

ARGUMENT.

We respectfully submit that under the pleadings and evidence in this case the only ground for complaint of discrimination in the assessment of property is that poultry and sucking animals were not assessed in Henry County, Missouri. Plaintiff claims that this was a fraud against it and in violation of its rights under Sections 3 and 4 of the Constitution of Missouri, and Section 1 of the XIV amendment to the Constitution of the United States, and that it deprived the plaintiff's shareholders of equal protection of the law.

We respectfully submit that if the property of a taxpayer be omitted from assessment, it is not a fraud on the taxpayer whose property is correctly assessed, but instead is a fraud on the government.

Plaintiff vehemently complains that poultry and sucking animals were not assessed in Clinton Township. Whether they were assessed or not is not material in this case. *Plaintiff's property was assessed at its true value in money in the manner provided by law.* The plaintiff suffered no damage or loss if poultry and sucking animals were omitted, and the loss, if any, fell wholly on the taxing bodies. The value of poultry products in the aggregate may be great, but most of it is the result of daily or at least of seasonable production, and courts may be assumed to know what everyone knows. The amount of poultry on hand on the first day of June of any year would be negligible. It may be that pigs, calves, lambs, colts, and other animals not yet separated from their mothers and which could not exist without them, should be taxed, but the General Assembly of Missouri in making the classifications of property and providing for the form of the list to be made (Section 12766, page 376, Laws of Missouri, 1923) did not see fit to make a separate classifica-

tion for such animals, and there is no reason for believing or assuming that they are not, when of any taxable value, included in the list of animals of all ages assessed. It is at most a captious claim and belongs to the same category as one would that wheat, hay, corn and oats, as such, are not listed separately for taxation. Such things represent potential wealth and are eventually converted into money, and the wealth produced is taxed in that form. If the producer has the money on the first day of June of any year, it is assessed. If he has paid his debts with it, it should be assessed in the hands of the ultimate beneficiary. If he has bought property, it is assessed. The law contemplates that all property subject to taxation shall be assessed against the owners thereof on the first day of June of each year. Section 12756, R. S. Mo. 1919.

The General Assembly of Missouri has not thought it fit or proper to make a special classification of poultry, but the eleventh subdivision of Section 12766, page 376, Laws of Missouri, 1923, provides for the assessment of "all other property not above enumerated." It may be that the plaintiff should be relieved from taxation on its shares of stock because the chickens of the thrifty housewife were omitted from taxation. Perhaps instead of assessing plaintiff's property at its true value, the assessor should have been busy counting how many hens and roosters or turkey hens or gobblers or ducks, geese and guineas the farmer's wife was tending to help raise enough money to support the family and pay the interest on their indebtedness.

Section 12967, R. S. Mo. 1919, provides in part:

> "The term 'property,' wherever used in this chapter, shall be held to mean and include every tangible or intangible thing being the subject of ownership, whether animate or inanimate, real or personal."

Undoubtedly, chickens, turkeys, geese, ducks, colts, calves, lambs and pigs are property; so are shirts, collars, socks and shoes, but the General Assembly of Missouri saw no good reason for requiring each article to be separately listed and shown on the assessment lists or books. It has not required that a detailed inventory be made, and in its judgment undoubtedly believed and intended that the classifications made in Section 12766, supra, were broad enough to include every species of property not expressly provided to be assessed in other manners by other laws. Shares of stock in banks are expressly provided to be assessed in another manner under Section 12775, R. S. Mo. 1919.

We have studied the complaint of the plaintiff in regard to the failure of the township assessor to assess chickens and sucking animals for taxation. Most of its complaint is relative to chickens because of the aggregate amount of wealth annually produced from that source, but ducks, geese, turkeys, colts, calves, lambs and pigs are entitled to their share. We are tempted to say that most of the income realized from poultry and poultry products is the result of the daily labor and care of the thrifty women who, between times of taking care of their own babies, ministering to the comforts of their families, tending the gardens and preserving a supply of fruit for the winter season, look after a few hens, a rooster or two, a turkey gobbler and hen, and perhaps an incubator and possibly some ducks and geese. They have gathered the eggs daily and cared for the flocks hourly to provide their families with groceries, clothe themselves and their children, and if there be any surplus left, help the heads of the families pay their interest. In Henry County, Missouri, as in all other counties of the State, the low rumble of the thunder and the vivid flash of the lightning in the nighttime is sufficient to arouse the guardian of the flocks to see that they are safely sheltered from the threatened torrents. It has been said that they have no need of a Standard Dictionary in

pursuing their labors because two words express their problem: "If" and "maybe." "If" the hatch is good, "maybe" they can raise a flock. No doubt as a matter of law, the hens on hand June 1st of each year should be assessed at their true value in money. No doubt the roosters should also be assessed, although, according to the United States government reports, at that time of the year they are a liability instead of an asset. In the determination of the assessment of such property, the law makes no provision for "deductible liability." The baby chicks might be listed as a "hope" and included in the assessment if the assessors are able to determine their actual value. The same conditions exist as to turkeys, geese, guineas and ducks. Perhaps the old gobbler should be assessed when he is strutting and according to his pomp and own estimate of his worth. The turkey hens and little turkeys are also property, and no provision is made by law in such cases for "reserves against losses." The lordly gander as he proudly leads the geese and goslings up and down the fence looking for a hole large enough to crawl through into the garden where tender plants may be had for the pulling, together with his followers, should not as a matter of law be omitted. Peafowls are also property, likewise canaries, and should not be overlooked.

If young animals were omitted from assessment, they were when separated from their mothers, practically valueless. There is no evidence of the value of poultry in Henry County, Missouri, on June 1, 1926. The only evidence was as to the opinions of certain witnesses as to the value of the annual poultry production.

No set amount can be fixed for the valuation of property by the assessor because its value must depend upon the facts in each particular case and be measured by the conditions which exist on the first day of June, which is the day fixed by law for the determination of such value and the assessment of such property. The assessors are entrusted with

the duty of assessing all property subject to taxation at its true value in money. They must of necessity exercise their judgment in determining that value and endeavor to honestly and impartially assess all kinds of taxable property on the same basis. The evidence in this case shows conclusively that the assessors honestly and fairly endeavored so to do.

Where poultry raising is engaged in as a business, the property is assessed for taxation. Where the raising of poultry is merely incidental, it may have been omitted. When the ideal condition arises and all property except such as is expressly exempted from taxation by the Constitution, is taxed according to its true value in money, the rates of taxation levied by the State and all of its political subdivisions can be greatly reduced and the burden of government be equally borne by all, but the amount of taxable wealth represented by poultry and sucking animals which escapes taxation, is but a drop in the bucket as compared to the great amount of wealth represented by other forms of property which the assessing officers are unable to discover. These observations are made because there is no need of allowing a "herring to be dragged across the trail" in the search for taxable wealth.

The plaintiff, petitioner herein, has no just cause of complaint as to the assessment of its shares of stock for taxation. The value of such shares of stock was determined in the manner provided by Section 12775, R. S. Mo. 1919, from which was deducted the value of all real estate represented by shares of stock because such real estate was taxable as "lands and town lots." Instead of the owners of shares of stock in banks and trust companies being discriminated against in the assessment of such property, they are of the most favored class known to the law. All of the indebtedness of the bank is deducted in determining the total valuation and only the net value is assessed for taxation. All other corporations are taxable on all of their

property regardless of the amount of their indebtedness, and can not deduct such indebtedness in making their return for assessment for taxation. No farmer or home owner or any other citizen can deduct their indebtedness from the amount of property owned by them in making their return for assessment for taxation, but all property owned by them must be assessed at its true value in money. All persons or corporations, except banks and trust companies, under the law are assessed for taxation on the true value of all of their property regardless of the amount they owe, even if such indebtedness be for the purchase price of the property subject to taxation.

We respectfully submit that the true rule in regard to the effect of the omission of poultry and sucking animals from taxation should be: IF ANY PROPERTY BE ILLEGALLY OMITTED FROM ASSESSMENT, OR BE ASSESSED BELOW ITS TRUE VALUE, EVEN IF INTENTIONAL ON THE PART OF THE ASSESSOR, IT DOES NOT CONSTITUTE A FRAUD ON THE OWNERS OF PROPERTY WHICH IS ASSESSED AT ITS TRUE VALUE, BUT DOES CONSTITUTE A FRAUD ON THE STATE AND ON THE POLITICAL SUBDIVISIONS OF THE STATE WHICH ARE AUTHORIZED TO LEVY AND COLLECT TAXES.

CONCLUSION.

The respondent respectfully insists that the plaintiff (petitioner herein) is not entitled to enjoin the collection of the taxes or any part thereof levied against the owners of its shares of stock, or to have the judgment of the Supreme Court of Missouri reviewed by this court because:

First: The validity of no statute of the State of Missouri is drawn in question as being violative of the Constitution, treaties or laws of the United States.

Second, the acts of no officer purporting to be in accordance with the laws of Missouri is drawn in question as being an interpretation or application of the laws of the State in a way to be violative of the Constitution, treaties or laws of the United States.

If poultry and sucking animals were not assessed by the township assessors of Henry County, Missouri, such omission was in violation of the laws, and proper legal remedies are provided by law for having such omitted property assessed. Such omission would not constitute an intentional, systematic and arbitrary discrimination against the plaintiff such as to entitle it to enjoin taxes lawfully levied against its shares of stock at the true value thereof as determined in the manner provided by law. If such omission constituted fraud, it was fraud against the State and its political subdivisions and not a fraud against taxpayers whose property was properly assessed.

Third: The plaintiff (petitioner herein) failed to avail itself of complete and adequate remedies provided by law if its shares of stock were illegally or improperly assessed, and for that reason is not entitled to equitable relief.

Fourth: The plaintiff (petitioner herein) was guilty of such laches in not seeking relief until after the assessment became final and the valuations were extended upon the tax books and the taxes were computed and extended thereon and certified to the collector for collection, and until after the State, the county and other political subdivisions of the State had entered into contracts based upon the amount of revenue to be derived therefrom, that it is barred from equitable relief.

The judgment of the trial court and of the Supreme Court of the State of Missouri was for the right party and should be upheld.

Respectfully submitted,

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DEC 3
CHARLES ELMO

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY,
Petitioner,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of Henry County, Missouri,
Respondent.

No. 464.

PETITION FOR REHEARING.

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY, Petitioner, vs. WALTER O. HILL, Treasurer and ex-Officio Collector of Henry County, Missouri, Respondent.	No. 464.

PETITION FOR REHEARING.

Comes now the above-named petitioner, the Brinkerhoff-Faris Trust and Savings Company, and presents this, its petition for a rehearing of the above-entitled cause, and in support thereof respectfully shows:

I.

The decision of the Supreme Court of Missouri, in effect, required the petitioner to appeal to a tribunal which had no power or jurisdiction to lower the petitioner's assess-

ment to the level of other assessments, but only had power to assess the property which was wholly omitted from assessment, and to raise the assessment of the under-assessed property to full value. The statutes conferring powers upon the State Tax Commission and the State Board of Equalization are quoted in petitioner's brief on pages 15 and 16.

In Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, l. c. 445 and 446, your Honors held that such a remedy is no remedy at all and that such a decision is to deny the injured taxpayer any remedy at all, because it is impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of under-assessed property in the taxing district, and that the right of a taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of the statute.

This is particularly true in view of petitioner's admission in its original return for taxation and in view of the allegations of its bill that its property is assessed at its true value (Tr., pp. 4, 5, 7).

II.

The decision of the Supreme Court of Missouri that the petitioner could not get relief from an intentionally discriminatory assessment in a court of equity left the peti-

tioner without any court, tribunal or administrative body competent to pass upon the validity of a fraudulently discriminatory tax and was therefore a denial to the petitioner of due process of law. Petitioner's property rights are involved. There is no place provided in the whole scheme of assessing, levying or collecting the tax where the plaintiff can be heard excepting in a court of equity.

Boonville National Bank v. Schlotzhauer, 317 Mo. 1298, l. c. 1313.

The County Board of Equalization had no power to grant relief to the petitioner. (See Opinion, p. 337.) There is no statute providing for an appeal to the State Board of Equalization. (See Opinion, p. 337.) The aggrieved taxpayer cannot pay his tax under protest and later recover the same (Robbins v. Latham, 134 Mo. 446). The aggrieved taxpayer cannot set up the defense of fraudulent discrimination as a defense in an action by the Collector to collect the tax.

State ex rel. v. Western Union Telegraph Co., 165 Mo. 502;
State ex rel. v. Johnson, 279 Mo. 228.

The State Tax Commission had no jurisdiction to grant any redress whatever.

Laclede Land & Imp. Co. v. State Tax Com., 295 Mo. 298.

After the assessment was made by the Assessor, after the State Board of Equalization had adopted that assessment, after the tax books had been made up and the tax bill had been issued and a suit had been brought thereon by the respondent, the Supreme Court of Missouri overruled the Laclede Land Company case, supra, and held that the State Tax Commission had ample jurisdiction to redress petitioner's grievances (see Opinion, p. 342), and that the petitioner was guilty of laches in not first appealing to the State Tax Commission (Opinion, p. 343), and therefore has no standing in a court of equity.

Such holding denies to petitioner due process of law.

III.

The question involved is one of great public importance to the citizens of Missouri. Practically every bank in Missouri is discriminated against as to the taxes of 1928 and 1929. Suits are pending all over the state and in the Supreme Court for relief from an intentionally discriminatory assessment. If the decision of the Supreme Court of Missouri in this cause is allowed to stand, then no such taxpayer has any remedy for the taxes of these two years, because the facts were made in all these cases and the time of appeal was long past before the Supreme Court of Missouri entered the final judgment in this cause. No attorney for any taxpayer would, prior to August 2, 1929, advise a client, aggrieved by an intentionally discriminatory assessment, to appeal to the State Tax Commission

in the face of a decision of the Supreme Court of Missouri made in 1922 (Laclede Land & Imp. Company case, supra), holding that it was "preposterous" and "unthinkable" for any person to conclude that the State Tax Commission had power to grant relief against a discriminatory tax.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the Court denying to petitioner the writ of certiorari be, upon further consideration, reversed.

Respectfully submitted,

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

I, Roy W. Rucker, counsel for the above-named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Roy W. Rucker
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 464.—October Term, 1929.

Brinkerhoff-Faris Trust & Savings Co., Petitioners, *vs.* Walter O. Hill, Treasurer, etc. } On Certiorari to the Supreme Court of State of Missouri.

[June 2, 1930.]

Mr. Justice Brandeis delivered the opinion of the Court.

In 1928, the Brinkerhoff-Faris Trust & Savings Company, acting as trustee for its shareholders, brought this suit in a Missouri court against the Treasurer of Henry County, Missouri, to enjoin him from collecting or attempting to collect a certain part of the taxes assessed against them for the year 1927 on the shares of its stock; and, pending decision in this suit, to restrain the prosecution of an action already brought by him against the plaintiff for that purpose.

The bill alleged that the township assessor had intentionally and systematically discriminated against the shareholders by assessing bank stock at full value, while intentionally and systematically omitting to assess certain classes of property and assessing all other classes of property at 75 per cent or less of their value. It asserted that, to the extent of 25 per cent, the assessments were void because such discrimination violated the equal protection clause of the Fourteenth Amendment. And it recited that the plaintiff had tendered, and was continuing to tender, payment of the 75 per cent of the taxes assessed, which amount it conceded was due. As grounds for equity jurisdiction, the bill charged that relief could not be had at law, either by way of defense in the pending action brought by the Treasurer or by paying the tax in full under protest and suing for a refund of 25 per cent thereof; and that no administrative remedy for the relief sought was, or ever had been, provided by law either by appeal or otherwise to or from the County Board of Equalization or the State Board of Equalization.

The defendant's answer denied all the allegations of discrimination and further opposed relief in equity on the grounds that the plaintiff had not pursued remedies before the County or State Board of Equalization pursuant to Articles 3 and 5 of Chapter 119 of the Missouri Revised Statutes of 1919; and that the plaintiff was guilty of laches in not so doing. The trial court refused the injunction and dismissed the bill, without opinion or findings of fact.

The Supreme Court of Missouri held, on appeal, that relief from the alleged discriminatory assessment could not be had in any suit at law; that this bill in equity was the appropriate and only remedy, unless relief could have been had by timely application to some administrative board; and that neither of the boards of equalization was charged with the power and duty to grant such relief. But, without passing definitely upon the question of discrimination, it concluded that if the plaintiff had "at any time before the tax books were delivered to the collector, filed complaint before the State Tax Commission, that body, in the proper exercise of its jurisdiction, would have granted a hearing, and would have heard evidence with respect to the valuations complained of, and, if the charges contained in the complaint had been found to be true, the valuations placed on its property would have been lowered, or that on other property raised, the property omitted from the assessment roll would have been placed thereon, and the discrimination complained of thereby removed. The remedy provided by the statute is adequate, certain, and complete." Compare *First National Bank of Greely* v. *Weld County*, 264 U. S. 450. The court held, therefore, that, because plaintiff had this adequate legal remedy, it was not entitled to equitable relief, and because plaintiff had not complained to the Tax Commission, "it was clearly guilty of laches in not so doing." On these grounds, the Supreme Court affirmed the judgment of the trial court. 19 S. W. (2d) 746.

The powers and duties of the State Tax Commission are prescribed by Article 4 of Chapter 119 of the Revised Statutes of 1919. Six years before this suit was begun, those provisions had been construed by the Supreme Court of Missouri in *Laclede Land & Improvement Co.* v. *State Tax Commission*, 295 Mo. 298. There the court had been required to determine whether the Commission had power to grant relief of the character here sought. The Commission had refused, on the ground of lack of power, an applica-

tion for relief from discrimination similar to that here alleged. The Laclede Company petitioned for a mandamus to compel the Commission to hear its complaint. The Supreme Court denied the petition, saying that it was "preposterous" and "unthinkable" that the statute conferred such power on the Commission; and that if the statute were thus construed, it would violate section 10 of article 10 of the constitution of Missouri. That decision was thereafter consistently acted upon by the Commission; and it was followed by the Supreme Court itself in later cases.[1]

No one doubted the authority of the *Laclede* case until it was expressly overruled in the case at bar.[2] While the defendant's answer asserted that the plaintiff had not availed itself of the administrative remedies under Articles 3 and 5 of Chapter 119 by application to the boards of equalization and was guilty of laches in not so doing (contentions which the state court held to be unsound), the answer significantly omitted any contention that there had been a remedy by application to the State Tax Commission, whose powers are dealt with in the intervening Article 4. The possibility of relief before the Tax Commission was not suggested by

[1]In *Boonville National Bank* v. *Schlotzhauer*, 317 Mo. 1298, where the taxpayer was represented by the same counsel who represent the plaintiff here, relief was sought by bill in equity from like discrimination, without prior application to the State Tax Commission. The Supreme Court of Missouri was required to decide whether the taxpayer had invoked the appropriate remedy; and it held, in an elaborate opinion which did not mention the Tax Commission, that the remedy pursued was the appropriate one and that the taxpayer was entitled to relief thereby, if the facts alleged were proved. See also *Jefferson City Bridge & Transit Co.* v. *Blaser*, 318 Mo. 373; *Columbia Terminals Co.* v. *Koeln*, 3 S. W. (2d) 1021; *State* v. *Baker*, 9 S. W. (2d) 589, 592-93; *State* v. *Dirckx*, 11 S. W. (2d) 38.

[2]The reason which prompted the Supreme Court to reexamine and overrule the *Laclede* case is thus stated in its opinion: "It is doubtful whether the evidence in this case warrants a finding that the local assessor intentionally and systematically undervalued real estate and personal property listed with him, other than bank stock; but there can be no question but that his failure to assess sucking animals and poultry was both intentional and pursuant to system. . . . If the owners of bank stock are entitled to an abatement of a portion of their taxes because other property was undervalued, it would appear on principle that all taxpayers of the state should be entirely relieved, so far as the taxes for 1927 are concerned, because the owners of poultry were not taxed at all. It seems necessary that we rechart our course." 19 S. W. (2d) 746, 749.

anyone in the entire litigation until the Supreme Court filed its opinion on June 29, 1929. Then it was too late for the plaintiff to avail itself of the newly found remedy. For, under that decision, the application to the Tax Commission could not be made after the tax books were delivered to the collector; and this had been done about October 1, 1927.

The plaintiff seasonably filed a petition for a rehearing in which it recited the above facts and asserted, in addition to its claims on the merits, that, in applying the new construction of Article 4 of Chapter 119 to the case at bar, and in refusing relief because of the newly found powers of the Commission, the court transgressed the due process clause of the Fourteenth Amendment. The additional federal claim thus made was timely, since it was raised at the first opportunity. *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. —. The petition was denied without opinion. This Court granted certiorari, 280 U. S. —. We are of opinion that the judgment of the Supreme Court of Missouri must be reversed, because it has denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right.

First. It is plain that the practical effect of the judgment of the Missouri court is to deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense. The plaintiff asserted an invasion of its substantive right under the Federal Constitution to equality of treatment. *Green* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499; *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441. If the allegations of the complaint could be established, the Federal Constitution conferred upon the plaintiff the right to have the assessments abated by 25 per cent. In order to protect its property from being seized in payment of the part of the tax alleged to be unlawful, the plaintiff invoked the appropriate judicial remedy provided by the State. *Second Employers' Liability Cases*, 223 U. S. 1, 55-57.

Under the settled law of the State, that remedy was the only one available. That a bill in equity is appropriate and that the court has power to grant relief, even under the new construction of the statute dealing with the Tax Commission, is not questioned.[3] And

[3]Equitable relief was denied solely on the equitable doctrines that the plaintiff had an adequate legal remedy by application to the Commission and was guilty of laches in not pursuing it.

it is held by the state court in this case that no other judicial remedy is open to the plaintiff and that no administrative remedy, other than that before the State Tax Commission, has been provided. But, after the decision in the *Laclede* case, it would have been entirely futile for the plaintiff to apply to the Commission. That body had persistently refused to entertain such applications; and the Supreme Court of the State had supported it in its refusal. Thus, until June 29, 1929, when the opinion in the case at bar was delivered, the Tax Commission could not, because of the rule of the *Laclede* case, grant the relief to which the plaintiff was entitled on the facts alleged. After June 29, 1929, the Commission could not grant such relief to this plaintiff because, under the decision of the court in this case, the time in which the Commission could act had long expired. Obviously, therefore, at no time did the State provide to the plaintiff an administrative remedy against the alleged illegal tax; and in invoking the appropriate judicial remedy, the plaintiff did not omit to comply with any existing condition precedent. *Montana National Bank* v. *Yellowstone County*, 276 U. S. 499, 505.

If the judgment is permitted to stand, deprivation of plaintiff's property is accomplished without its ever having had an opportunity to defend against the exaction. The state court refused to hear the plaintiff's complaint and denied it relief, not because of lack of power or because of any demerit in the complaint, but because, assuming power and merit, the plaintiff did not first seek an administrative remedy which, in fact, was never available and which is not now open to it. Thus, by denying to it the only remedy ever available for the enforcement of its right to prevent the seizure of its property, the judgment deprives the plaintiff of its property.

Second. If the result above stated were attained by an exercise of the State's legislative power, the transgression of the due process clause of the Fourteenth Amendment would be obvious. *Ettor* v. *Tacoma*, 228 U. S. 148.[4] The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid (*First National Bank of Greely* v. *Weld County*, 264 U. S. 450) state statute. The federal

[4]Compare *Turner* v. *New York*, 168 U. S. 90, 94; *Saranac Land & Timber Co.* v. *Comptroller*, 177 U. S. 318, 325; *Crane* v. *Hahlo*, 258 U. S. 142, 147; *Atchafalaya Land Co.* v. *F. B. Williams Cypress Co.*, 258 U. S. 190, 197.

guaranty of due process extends to State action through its judicial as well as through its legislative, executive or administrative branch of government.[5]

It is true that the courts of a State have the supreme power to interpret and declare the written and unwritten laws of the State; that this Court's power to review decisions of state courts is limited to their decisions on federal questions;[6] and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court.[7]

But our decision in the case at bar is not based on the ground that there has been a retrospective denial of the existence of any right or a retroactive change in the law of remedies. We are not now concerned with the rights of the plaintiff on the merits, although it may be observed that the plaintiff's claim is one arising under the Federal Constitution and, consequently, one on which the opinion of the state court is not final; or with the accuracy of the state court's construction of the statute in either the *Laclede* case or in the case at bar. Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense,—whether it has had an opportunity to present

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[5] *Owenby* v. *Morgan*, 256 U. S. 94, 111. Compare *Pennoyer* v. *Neff*, 95 U. S. 714; *Standard Oil Co.* v. *Missouri*, 224 U. S. 270, 281; *Frank* v. *Mangum*, 237 U. S. 309, 326, 335; *Moore* v. *Dempsey*, 261 U. S. 86.

[6] *Kryger* v. *Wilson*, 242 U. S. 171, 176; *Mount St. Mary's Cemetery Ass'n.* v. *Mullins*, 248 U. S. 501, 503; *Quong Ham Wah Co.* v. *Industrial Accident Comm.*, 255 U. S. 445, 448; *Fox River Paper Co.* v. *Railroad Comm.*, 274 U. S. 651, 655.

[7] *Central Land Co.* v. *Laidley*, 159 U. S. 103, 112; *Patterson* v. *Colorado*, 205 U. S. 454, 461; *Willoughby* v. *Chicago*, 235 U. S. 45, 50; *O'Neil* v. *Northern Colorado Irrigation Co.*, 242 U. S. 20, 26-7; *Dunbar* v. *City of New York*, 251 U. S. 516, 519; *Booker* v. *Fidelity Trust Co.*, 261 U. S. 114, 118; *Tidal Oil Co.* v. *Flanagan*, 263 U. S. 444, 450; *American Railway Express Co.* v. *Kentucky*, 273 U. S. 269, 273. For "a long line of decisions" holding "that the provision of § 10, Article 1, of the Federal Constitution, protecting the obligation of contracts against state action, is directed only against impairment by legislation and not by judgments of courts", see *Tidal Oil Co.* v. *Flanagan*, 263 U. S. 444, 451, note 1. Likewise, with reference to *ex post facto* laws. *Kring* v. *Missouri*, 107 U. S. 221, 227; *Ross* v. *Oregon*, 227 U. S. 150, 161; *Frank* v. *Mangum*, 237 U. S. 309, 344.

its case and be heard in its support. Undoubtedly, the state court had the power to construe the statute dealing with the State Tax Commission; and to reexamine and overrule the *Laclede* case. Neither of these matters raises a federal question; neither is subject to our review.[8] But, while it is for the state courts to determine the adjective as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.[9] Compare *Postal Telegraph Cable Co.* v. *Newport*, 247 U. S. 464, 475-6.

Third. The court's finding of laches was predicated entirely on the plaintiff's failure to apply to the State Tax Commission. In view of what we have said, this ground is not sufficient independently to support the judgment. And, as the Supreme Court of Missouri did not decide whether the allegations of the plaintiff's bill were sustained by the proof, we do not inquire into the merits of the plaintiff's claim under the equal protection clause. The judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice McReynolds did not hear the argument and took no part in the decision of this case.

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[8]The process of trial and error, of change of decision in order to conform with changing ideas and conditions, is traditional with courts administering the common law. Since it is for the state courts to interpret and declare the law of the State, it is for them to correct their errors and declare what the law has been as well as what it is. State courts, like this Court, may ordinarily overrule their own decisions without offending constitutional guaranties, even though parties may have acted to their prejudice on the faith of the earlier decisions. The doctrine of *Gelpcke* v. *Dubuque*, 1 Wall. 175 and *Butz* v. *Muscatine*, 8 Wall. 575, like that of *Swift* v. *Tyson*, 16 Pet. 1, is, if applied at all, confined strictly to cases arising in the Federal courts. *Fleming* v. *Fleming*, 264 U. S. 29, 31; *Tidal Oil Co.* v. *Flanagan*, 263 U. S. 444, 451; *Moore-Mansfield Const. Co.* v. *Electrical Installation Co.*, 234 U. S. 619, 624-26; *Bacon* v. *Texas*, 163 U. S. 207, 220-24; *Central Land Co.* v. *Laidley*, 159 U. S. 103, 111-12.

[9]Had there been no previous construction of the statute by the highest court, the plaintiff would, of course, have had to assume the risk that the ultimate interpretation by the highest court might differ from its own. Likewise, if the administrative remedy were still available to the plaintiff, there would be no denial of due process in that regard.